# BY ORDER OF THE SECRETARY OF THE AIR FORCE

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Civil Engineering

# SERVICE CONTRACT GUIDE FOR CIVIL ENGINEERS

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OPR: HQ AFCESA/CEOC (Ms. Patricia Coyle) Certified by: HQ AFCESA/CD (Mr. Dennis

Firman)

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This service contract handbook is intended for use by base-level civil engineering throughout the Air Force. The purpose of the handbook is to provide "how-to" information on the structure and administration of base-level, performance-based, service contracts. Our goal is to provide a useful tool to help the civil engineering community transition smoothly into a service contract. As part of the overall military structure drawdown in recent years, Base Civil Engineer (BCE) workforce levels and funds available to support base operations and maintenance functions are being drastically reduced. Despite dwindling resources, the Air Force and its MAJCOMs must maintain the highest quality level of service to support customer requirements. Each year the Air Force contracts for a large part of its mission support. When the government contracts-out a requirement, it is entitled to receive quality service. Establishing a base-line knowledge of how to develop performance-based service contracts is essential.

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# PART 1 -- THE CONTRACT REQUIREMENTS PACKAGE

# Chapter 1

#### **GOVERNMENT ESTIMATES**

- 1.1. Government Estimates. One important tool contracting uses to determine the reasonableness of a contractor's proposal is an independent government cost estimate provided by civil engineering. The independent cost estimate means the office generating the requirement should provide contracting an estimate based upon government sources not outside or contractor estimates. This is a sensitive document and, therefore, must be safeguarded to prevent potential contractors from using the estimate as a baseline for their cost/price proposals. Mark the document "For Official Use Only." Your cost estimate must accurately reflect the service to be purchased. Determine which labor categories will be needed to perform the service, the number of personnel from each labor category, and how many hours will be required from each labor category. Also identify all materials, equipment, insurance, or any other estimated costs associated with performance of the service. The key to acquiring the best, fair and reasonable, price for the government is a detailed cost estimate. An accurate and complete cost estimate will be used to reconcile major differences between the government estimate and contractor proposed price. Remember to provide the total contract cost for the service; i.e., the basic year plus all options years. Sources of data used in developing the government estimate must be documented for future reference.
- **1.2. Cost Elements.** A complete government estimate is a breakdown of cost elements: direct costs, indirect costs, profit and escalation.
  - **1.2.1. Direct Costs.** A direct cost is any cost that can be identified specifically with a particular final cost objective. Cost identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. The most common direct costs are labor rates and labor burden. Other allowable direct costs may be expendable supplies, materials, or equipment that are used to perform the required service.
    - 1.2.1.1. Wages and fringe benefits for service employees are determined by either a collective bargaining agreement or a Department of Labor Wage Determination. If there is a predecessor contract which has a collective bargaining agreement, the direct labor calculations will be based on that agreement and a copy of the collective bargaining agreement should be included in the solicitation. If there is no collective bargaining agreement, the direct labor calculations will be based on the Wage Determination. The Department of Labor Wage Determination lists labor rates for specific labor categories. Obtain a list from your Contracting Office or access the internet web site: http://www.dol.gov/dol/esa/public/regs/compliance/whd/web/index.htm). If you are unsure of the labor category to use for your requirement, consult the Service Contract Act Directory of Occupations to compare job definitions to the Wage Determination list. Remember, it is not the job title, but the required tasks that determine the correct usage of the Wage Determination. Your contracting office has copies of the Wage Determinations and the directory. For the labor categories that are not identified in the Wage Determination, contact the Civilian Personnel Division for the government employee classification and wage rate which best fits your requirement.
    - 1.2.1.2. You may obtain the labor burden information from your contracting office or your contracting office may add labor burden to the labor rates you identify. Labor burden consists of Federal Insurance Contributions Act (FICA) which is Social Security, Federal Unemployment

Insurance (FUI), State Unemployment Insurance (SUI), Health and Welfare (H&W), and Workman's Compensation.

- 1.2.1.3. Other direct costs (ODC) are items the contractor incurs as expenses when performing the required service. Common costs are contract specific materials items, such as uniforms, badges, or tools. Other allowable direct costs may be travel, insurance, equipment, or expendable supplies, such as cleaners, boxes, or tape. It is important to identify and list all items applicable to the performance of the service. ODC can be estimated by researching past contracts of like services or doing a market survey of local companies who provide like services.
- **1.2.2.** Indirect Costs. An indirect cost is any cost not directly identified with a single, final cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract, indirect costs are those remaining to be allocated to the several cost objectives. The most common indirect costs are general and administrative (G&A) expenses. G&A costs are attributable to the general management, supervision, and conduct of the contractor's business as a whole. Other indirect costs may be manufacturing overhead expenses or building occupancy costs. Like direct costs, you can research past contracts of like services or do a market survey of local companies who provide like services to determine an indirect cost rate that is applicable to your requirement.
- **1.2.3. Profit.** Profit is the total remuneration the contractor may receive for contract performance over and above allowable costs. It is in the government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract qualified businesses, and maintain a viable industrial base. Both government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. You can estimate the profit by researching past contracts of like services or apply the "rule of thumb" based on the degree of estimated risk, 6-9 percent. Your contracting office will calculate the profit by researching past contracts of like services and preparing a weighted guidelines (DD 1547, Record of Weighted Guidelines Application).
- **1.2.4. Escalation.** Typically a contract consists of a basic year and four one-year options. Each option year must consider an escalation rate which projects inflation costs. You can calculate escalation by using the established rates of the Defense Principal Deputy Comptroller as published in the Federal Register. This publication can be obtained from your contracting office.
- **1.3.** Transfer the line items and total dollar amounts from your cost estimate to your AF Form 9, Purchase Request, (Also see Chapter 2). The Bid Schedule, Section B of the contract, will also mirror the line items of your cost estimate; however, the total dollar amounts will remain blank (Also see Chapter 5).
- 1.4. The format for developing your government estimate can be an agreement between you and your Contracting Officer. In addition, if you are considering contracting with the National Institute for the Severely Handicapped (NISH), you must develop your government estimate by following the guidance in the Pricing Memorandum No. 3, published by the Committee for Purchase from People Who are Blind or Severely Disabled. You can request this guide from your Contracting Officer. The following are two examples of styles you may wish to use for your cost estimate. There are many styles to choose from. Determine a format that works best for you and your contracting office. Figure 1.1, Sample Government Estimate, is one style of a government estimate with hypothetical information to guide you through the

process. Figure 1.2, Sample Format For Government Estimate, is another style of a government estimate with a blank worksheet and instructions.

# Figure 1.1. Sample Government Estimate.

(The following information is not all inclusive nor exact. It is provided as an example only of how to lay out your estimate. You may have additional and/or different information.)

#### DIRECT LABOR

T	ine	Item	0001	- Basic	(1	Year).
_		110111	OOOI	- Dasic	١ т	i cai i.

Determination)

MAN HOUR COST PER YEAR (Total 8320 Hours) \$55,203

# Line Item 0002 - Phase in Period (10 Days):

Contract Manager GS-6	@ \$10.46 x	$\times$ 80 Hrs x 1 Person =	\$ 837
Refuse Collector	@ \$ 5.36 ×	x 80 Hrs x 3 People =	\$1,286
MAN HOUR COST PER 10	DAYS (Total :	320 Hours)	\$2,123

# DIRECT LABOR BURDEN

FICA @ 7.65%, FUI @ .80% (\$7,000 cap per employee), SUI @ 2.9% (\$8,000 cap per employee), H&W @ \$2.54, W/Comp @ 5.5%

#### Line Item 0001 - Basic (1 Year):

Total Man Hour Cost Per Year x FICA \$55,203 x .0765 =	\$4,223
4 employees x FUI \$7,000 x .008 x 4 =	\$224
4 employees x SUI \$8,000 x .029 x 4 =	\$928
Total Hours x H&W 8320 x \$2.56 =	\$21,299
Total Man Hour Cost Per Year x W/Comp \$55,203 x .055	\$3,036
Total Basic Year	\$29,710

#### Line Item 0002 - Phase-In Period (10 Days):

· · · · · · · · · · · · · · · · · · ·	
Total Man Hour Cost Per 10 Days x FICA	\$162
\$2,123 x.0765 =	
Days x FUI	\$17
\$2,123 x .008 =	

Total Man Hour Cost Per 19 Days x SUI	\$62
\$2,123 x .029 =	
Total Hours x H&W	\$819
320 x \$2.56 =	
Total Man Hour Cost Per Year x W/Comp	\$117
\$2,123 x .055	
Total Phase In	\$1,563

# **OTHER DIRECT COSTS (ODC)**

# Basic (1 Year):

Uniforms (if required) 4 @ \$ 10.00 = \$40Badges (if required) 4 @ \$ 1.50 = \$6Dumpster 1 @ \$400.00 = \$400Truck 1 @ \$20,000 = \$20,000

(Purchase/Lease depending on most beneficial cost to government; include depreciation deducts)

TOTAL BASIC YR ODC \$20,446

Option Year:

Replacement Uniforms 2 @ \$ 10.00 = \$20Replacement Badges 2 @ \$ 1.50 = \$3

Truck 1 @ \$20,000 = \$20,000

(Purchase/Lease depending on most beneficial cost to government; include depreciation deducts)

TOTAL PER OPTION YR \$20.023

#### TOTAL ESTIMATE

TOTAL BASIC YR ITEM 0003	l <b>:</b>	TOTAL OPTION YRS:	
Item 0001 Direct Labor	\$ 55,203	Item 0001 Direct Labor	\$55,203
Item 0001 Labor Burden	\$ 29,710	Item 0001 Labor Burden	\$29,710
ODC	\$ 20,446	ODC	\$20,023
TOTAL ITEM 0001	\$105,359	TOTAL OPTION YR	\$104,936
PROFIT @ 8%	\$113,788	PROFIT @ 8%	\$113,331
TOTAL BASIC YR ITEM 0002	2:	Total Option yr 1 w/esc 2.9%	\$117,618
Item 0002 Direct Labor	\$ 2,123	Total Option yr 2 w/esc 3.0%	\$120,117
Item 0002 Labor Burden	\$ 1,563	Total Option yr 3 w/esc 3.0%	\$124,720
ODC	<u>\$-0-</u>	Total Option yr 4 w/esc 3.0%	\$127,432
TOTAL ITEM 0002	\$3,686		
PROFIT @ 8%	\$3,981		
TOTAL BASIC YR	\$117,769		

TOTAL ESTIMATE (Basic plus all options): \$605,656

Figure 1.2. Sample Format for Government Estimate.

Direct Labor Costs	
1. Productive Labor (manhours x \$per hour)	\$
2. Supervisory Labor (manhours x \$per hour)	\$
3. Vacations	
a. (hours for productive employees x \$per hour)	\$
b. (hours for supervisory employees x \$per hour)	\$
4. Holidays	
a. (hours holiday pay for productive employees x \$per hour)	\$
b. (hours holiday pay for supervisory employees x \$per hour)	\$
5. Subtotal Labor Cost (sum of lines 1 through 4)	\$
6. Health & Welfare (hours x \$ per hour)	\$
7. Workman's Compensation (% of total Labor Cost on line 5)	\$
8. Payroll Taxes (% of total Labor Cost on line 5)	\$
9. Other Fringe Benefits	\$
10. Subtotal Fringe Benefit Costs (sum of lines 6 through 9)	\$
11. Total Labor & Fringe Benefit Costs (sum of lines 5 & 10)	\$
Other Direct Costs	
12. Supplies & Materials (% of line 11)	\$
13. Equipment (% of line 11)	\$
14. Uniform Purchase or Rental (employees x average)	\$
15. Uniform Maintenance (employees xweeks x \$ per week)	\$
16. Subcontracts	\$
17. Total other direct costs (sum of lines 12 through 16)	\$
Indirect Costs	
18. General & Administrative (% of line 11 plus line 17)	\$
Profit	
19. Profit (% of line 11 plus line 17)	\$
20. Total Indirect Costs (sum of lines 18 & 19)	\$

Government's Estimate 21. Reasonable Contract Price (sum of lines 11, 17, & 20)		\$
Estimate Prepared by:		
(Signature)	(Date)	_

#### INSTRUCTIONS

- Line 1 Use past contracts of like work as a guide to estimate the manhours and labor categories required. Multiply these hours by the labor category minimum wage specified on the Wage Determination issued by the Department of Labor (DOL). The Wage Determination can be obtained from you Operational Contracting Office.
- Line 2 Supervisory hourly rates can be estimated by comparing labor categories of Government employees to the supervisory tasks of the requirement. This information can be obtained from your Civilian Personnel Classification Division.
- Line 3 Estimated vacation hours should be based on the vacation requirements specified in the Wage Determination or collective bargaining agreement. The wage rates used to compute vacation pay are those specified on line 1 and 2.
- Line 4 The hours of holiday pay should be determined by multiplying the number of holidays specified on the Department of Labor Wage Determination by average <u>daily</u> productive manhours indicated on line 1 and average <u>daily</u> supervisory manhours indicated on line 2. Multiply the hours of holiday pay for productive employees by the hourly wage specified on the Wage Determination and for supervisory employees by the estimated supervisory hourly rate.
- Line 6 Multiply the sum of the manhours listed in lines 1, 2, 3(a), 3(b), 4(a), and 4(b) by the per hour Health and Welfare benefit specified on the Wage Determination.
- Line 7 The percentage used to estimate workmen's compensation can be based on an average of the percentages cited in cost breakdowns submitted in response to RFPs for similar services. Average at least three offers.
- Line 8 Payroll taxes should include Social Security (FICA), Federal Unemployment Insurance (FUI), and State Unemployment Insurance (SUI). For current rates, contact your contracting office.
- Line 9 Other fringe benefits include items such as sick leave, pensions, etc., which are not listed on the Wage Determination. To identify and calculate other fringe benefits, use the calculation method of past contracts (past government estimates, past contractor cost proposals, and/or the Defense Contract Audit Agency) of similar work r contact local companies that provide similar work for calculation assistance.
- Line 12 The percentage used to estimate supplies & materials should be based on previous contracts of similar services. Examine cost breakdowns on at least three recent contracts of similar service to determine what percent of the direct cost the supplies & materials represent. Average the three percentages obtained and insert the result in line 12.
- Line 13 The percentage used to estimate equipment should be based on previous contracts of similar services. Examine cost breakdowns on at least three recent contracts of similar service to determine what

percent of direct costs the equipment represents. Average the three percentages obtained and insert the result in line 13.

Line 14 - To estimate uniform purchase or rental, research recent contracts of similar service and average the cost of uniform purchase or rental. Estimate the number of employees by totaling the productive hours and supervisory hours and dividing this total by 2008. Then, multiply the number of employees by the average cost of uniform purchase or rental.

Line 15 - Uniform maintenance includes dry cleaning or laundering. When computing uniform maintenance, the estimated number of employees can be established by totaling the productive hours and supervisory hours and dividing this total by 2008. The total number of employees will then be multiplied by the number of weeks in the contract period and the result multiplied by the weekly rate specified by the Uniform Allowance section of the Wage Determination.

Line 16 - Subcontracts should include items which are required by the solicitation and are not included in the productive labor figures listed in line 1.

Line 18 - When estimating General and Administrative (G&A) or overhead costs, you must consider the nature of the work and the extent of the contractor's investment. Small business concerns tend to have higher overhead costs than large business concerns. As a general rule for estimating G&A for service contracts, use 6-10 percent of the total direct labor cost and other direct costs. G&A may include cost items such as professional fees, advertising, loss and bad debt, general insurance, licenses, subscriptions, sales expenses, general office help, etc.

Line 19 - The percentage used to compute profit will depend on the size of the contract, degree of risk, nature of work, and the type of contract. The greater the liability or risk is, the higher the profit rate will be. A good estimated basis is 6-9 percent.

#### **FUNDING/AF FORM 9**

- **2.1. Funding.** Funding must be available to cover the basic contract period for a firm-fixed price contract. An AF Form 9 is funded by annual appropriations, and the contract it funds cannot cross fiscal years unless authorized by law or the service cannot be segregated for separate performance in each fiscal year. Indefinite quantity or requirements type contracts may extend beyond the fiscal year in which it begins, provided specified minimum quantities are certain to be ordered in the initial fiscal year. If a contract has an award fee feature, funds must be available to cover the first award fee period, and in some cases, the fee must be funded up-front at time of award.
- **2.2. AF Form 9, Purchase Request.** It is always preferable to have a funded AF Form 9. However, a contracting officer may initiate a contracting action with a "planning" AF Form 9, provided the AF Form 9 contains a statement that the funds will be available. Contact your contracting office for the wording of this statement. A contract may be completed to the point of the Contracting Officer's signature, but it may not be signed or approved before funds are available and will not be distributed. The contract will not be delivered to the contractor nor will the contractor be notified of the award until funds are certified. A "planning" AF Form 9 is most often used when the contract will not be signed or performance will not begin until the next fiscal year. The Contracting Officer may initiate a contracting action properly chargeable to funds of the new fiscal year before these funds are available provided the contract includes the clause 52.323-18, Availability of Funds. This authority may be used only for operation and maintenance and continuing services necessary for normal operations and for which Congress previously had consistently appropriated funds, unless specific statutory authority exists. Once funds are certified for the new fiscal year, the Contracting Officer must provide the contractor with a written notice of confirmation that funds are available.
- **2.3. Fund Types.** Congress appropriates several general types of funds which are intended to be used for different purposes. Service contracts are generally funded by operation and maintenance (O&M) accounts which are funded by annual appropriations. Congress intends that O&M funds are more appropriate to cover the normal, recurring, mission-related operations of an agency. In order to use O&M funds, agencies are expected to forecast their monthly, quarterly, and year-to-year requirements with a high degree of accuracy. It is not appropriate to use O&M funds to acquire a requirement in a piecemeal manner.
- **2.4. Coordination.** Be sure to coordinate your AF Form 9 properly through the Civil Engineer process and all other appropriate organizations as required, such as functional finance office, Base Supply when the service involves equipment rental, transportation when the service involves vehicle rental, and/or manpower when the service exceeds a mandated threshold. The AF Form 9 total is the basic year total from your government cost estimate. Option years should be identified in the description block of the form but not included in the total amount.

# Figure 2.1. Completing an AF Form 9, Purchase Request.

NO: Purchase Request number entered here which can normally be provided by your resource advisor.

INSTALLATION: Indicate the appropriate requester's installation.

DATE: The date the form is prepared.

TO: Contracting office where AF Form 9 will be delivered.

CLASS: Leave blank--will be completed by contracting office.

THROUGH: Accounting office through which the AF Form 9 will be routed and any other office required in your coordination process (such as manpower, safety, communication squadron, etc.).

FROM: Requester's office symbol, point-of-contact, phone number

CONTRACT, PURCHASE ORDER OR DELIVERY ORDER NO: If this is a planning document, reference current order number. If this is a new requirement, leave blank.

PURCHASED FOR: Actual customer; may be a repeat of the "FROM" block.

FOR DELIVERY TO: Where item will be delivered or service performed. Include building number, room number, and point of contact.

NO LATER THAN: Actual date item or service is required. Contracting Office usually assigns a PRI-ORITY RATING based on the requirement.

ITEM: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). Contract Line Item Numbers (CLINs) and subCLINs should be listed (0001, 0001A). These numbers correspond directly to the task line items identified in the bid schedule.

DESCRIPTION OF MATERIAL OR SERVICES TO BE PURCHASED: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). This block should concisely define the service to be provided, as well as reference any attachments such as drawings, item listings, etc. An opening statement should be used. For example: "Services Nonpersonal: Furnish all labor, tools, parts, materials, and transportation necessary to perform the following service."

QUANTITY: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). This block lists the quantity associated with the specific CLIN listed in the "ITEM" block. Again, this block can be transposed directly from the government cost estimate.

UNIT: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). This block lists the unit of issue associated with the specific CLIN in the "ITEM" block. (Job is JB, Each is EA, Month is MO, Year is YR)

ESTIMATED UNIT PRICE: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). Again, this block should correspond to the government cost estimate.

ESTIMATED TOTAL COST: This block should directly reflect both the government cost estimate and the Performance Work Statement (PWS). This figure is calculated simply by multiplying across the columns for each particular CLIN and subCLIN. The "QUANTITY" is multiplied by the "ESTIMATED UNIT PRICE" to get an estimated total cost.

TOTAL: The estimated total costs for each CLIN and subCLIN are added together to get a total price. The total dollar value is for the basic year ONLY! Totals for any additional options can be listed in the "DESCRIPTION OF MATERIAL OR SERVICES TO BE PURCHASED block below the relevant CLIN information.

PURPOSE: State the purpose of the acquisition. Include any other general information about your funding.

REQUESTING OFFICIAL: Date, name, and signature of requesting official. Be sure to include office symbol and phone number.

APPROVING OFFICIAL: Date, name, and signature of approving official. Must be at least one grade senior to the requesting official.

ACCOUNTING CLASSIFICATION: Enter the accounting classification obtained from your resource advisor.

AMOUNT: This dollar amount should be the same as the Total in the "TOTAL" block.

CERTIFYING OFFICIAL: Date, name, grade, and signature of the person certifying the funds. Usually the certifying official enters this information.

#### PERFORMANCE WORK STATEMENTS

- 3.1. Performance-Based Requirement. Performance Work Statements (PWSs) for service requirements must be prepared in accordance with the Air Force Manual (AFMAN) 64-108. If your requirement falls into one of the exceptions to AFMAN 64-108, it is still advisable to follow the PWS format as closely as possible to establish consistency. The PWS should be performance based; that is, describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided, enable assessment of work performance against measurable performance standards, rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost effective methods of performing the work, and avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively. A performance-based PWS states requirements in terms of ranges of acceptance characteristics or minimum acceptable standards. Remember, a PWS should state only the **minimum** needs of the Air Force to get the job done. (NOTE: Because the Statement of Work (SOW) evolved into the Performance Work Statement, the terms SOW and PWS are often used interchangeably. Some bases use the term SOW to refer to contracts that are exempt from AFMAN 64-108; however there is really no difference between a SOW and a PWS in base-level contracting.)
- **3.2. Step-By-Step Review.** The design of a PWS and the QASP is based on a systematic analysis of the function. Job analysis consists of a step-by-step review of the requirement to arrive at the specific output services and associated standards. When acquiring services which previously have been provided by contract, agencies must rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable. In the first phase of developing a PWS, the analysis starts with information on how the job is currently being done and ends with the performance output requirements. (Chapter 2 of AFMAN 64-108 outlines this process with examples.) If the proposed service is a new service never performed by or for the government before, the job analysis is done based on the best available information and estimates. When identifying the processes, conduct a commercial-market research and merge commercial and government standards to acquire a more efficient business practice.
  - 3.2.1. In the first step of the job analysis, the analyst reviews the current organization and identifies the services it provides and outlines all the processes required to do the job.
  - 3.2.2. The second step is to prepare a tree diagram. A tree diagram breaks a job into smaller and smaller parts. Each part brings about a final result (output) or service.
  - 3.2.3. Next, take each part of the tree diagram and break it into input, work, and output. Input is what is needed to do the job, work is what steps are needed to do the job, and output is what the work produces. During this step, the analyst decides, with management, what outputs are to be contracted and what will remain in-house.
  - 3.2.4. After the analyst has picked the services on the tree diagram that are to be contractor provided, data can be gathered for these services. In this step, the analyst collects data on how much input is required to do the job and how the output is furnished.

- 3.2.5. Each service to be contracted has a performance requirement assigned. The analyst decides how the service can be measured and, with management, determines what standards apply and what performance requirement is needed for that service.
- 3.2.6. The next step is to analyze directives. During this step, the analyst decides what directives apply to the service. Any directive, or portion thereof, must be classified as either mandatory or
- advisory and must be held to a minimum. In making this determination, the analyst must keep in mind that it is not the Air force's concern as to how the services are performed, but rather what the results are. Only those directives that must absolutely be followed for mission accomplishment, safety, or legal reasons should be imposed on the contractor.
- 3.2.7. The last step before beginning to write the PWS is to analyze costs. During this step, the analyst works with the manpower office to prepare the estimated contractor cost of each specific service. These costs are used in the PWS preparation to determine the percentage of total cost of individual tasks for purposes of determining the amount of any deductions for performance that does not meet the required standard. These costs are also used in preparing the government estimate and for evaluating contractor proposals in negotiated procurements.
- **3.3.** A Contractual Document. The PWS becomes an attachment to a service contract. Section C of the contract will state the PWS title and date, and Section J identifies the PWS attachment number.
  - 3.3.1. Because the PWS becomes a part of the contract, it is contractually binding. Every word in the PWS can translate into cost and profit and will be interpreted to the advantage of the reader. Since the words in the PWS are the only means of describing the Air Force requirements, they must be clear and unambiguous. Every effort must be made to use the simplest words, phrases, and sentences possible to avoid the risk of misinterpretations. Quantitative explanations of specified requirements must be provided wherever possible. Clearer requirements result in lower risk to the contractor and lower costs to the government.
  - 3.3.2. Use a standardized PWS boilerplate when available. A standardized PWS will ensure the PWS is in the required AFMAN 64-108 format, essential language is not omitted, and ambiguities are less likely to occur. Standardized service contract boilerplates (AFMAN 64-108 format) and existing service contracts (some in the obsolete AFR 400-28 format) can be accessed on AFCESA's home page on the World Wide Web at "http://www.afcesa.af.mil/AFCESA/Contracts/."
- **3.4.** Who Writes the PWS? The most qualified person must write the PWS. The functional area chief (FAC) is responsible for preparing the PWS with the assistance of the functional area analyst. The quality assurance evaluators (QAEs) should also be involved in the initial preparation of the PWS.
  - 3.4.1. The development of a quality PWS is a team effort of personnel from the functional area, manpower office, security police, safety, contracting office, and other organizations as appropriate for the specific requirement. It is imperative that the team do not rush through the development of the PWS. To write a quality document, the team must begin writing early to assure the PWS is thorough, clear, and timely.
  - 3.4.2. Once the PWS is drafted, it should be submitted to other organizations for their contributions. For example, the security police squadron requires specific information to be included in a PWS for both classified and unclassified acquisitions.

- 3.4.3. The contracting office is responsible for advising and assisting the FAC in preparing the PWS. When a draft PWS is submitted to the contracting office for early editing, ambiguous language and misstatements may be avoided. Because the PWS will become a part of the contract which will contain clauses and provisions, the contracting office will be able to eliminate PWS duplications or contradictions in contract clauses and provisions.
- 3.4.4. The PWS describes the specific requirements the contractor must meet and specifies the standards and quality level the government expects in the performance of the contract. What is written directs the contractor's performance and drives the cost of the contract. Therefore, whatever you write is what the contractor will perform and whatever you do not write, the contractor will not perform. Also remember, keep your PWS as simple as possible and make it performance based; i.e., tell the contractor what service you want not how to do the job cover the processes of the service to be performed rather than detailing the "how-to."
- **3.5.** Writing the Performance Requirements Summary (PRS). Specific Tasks, Section C-5, is the heart of the PWS. When developing the specific tasks section, begin drafting the AF Form 713, Performance Requirements Summary. Establish the standards, method of surveillance, and maximum payment percentage for meeting the acceptable quality levels for each required service, enter this information into the PRS, and reference the PWS paragraph. Include the PRS as a Technical Exhibit. Keep the PRS items to a minimum. To many items will create too much work for the QAE and not provide adequate deductions to ensure contractor quality performance.
  - 3.5.1. As you develop the PWS, specific tasks which can be measured quantitatively or qualitatively should immediately be listed in the PRS "Required Service" block. The stress is on performance, not procedures; therefore, list the tasks that are identified for output, not internal management. Also reference the PWS paragraph(s) from which the specific task is taken. One PRS item may reference several paragraphs of the PWS. Keep the PRS items to a minimum. (Combine PRS items but be sure to include all processes of the requirement). Each PRS item should be a Section B contract line item (see Chapter 5).
  - 3.5.2. Every service task has a performance standard. Standards are measurable and attainable goals defined by the government as the minimum level of acceptable productivity. Performance standards must define acceptable levels of quality and state frequency of recurring services. You must find the most reasonable standard that embodies the criticality of the service to be furnished and the minimum needs of the government for the service. If a MAJCOM standard has been set, use it and modify when necessary. Remember, you should not lower a MAJCOM standard, but you can raise it. (Sometimes, MAJCOMs will authorize lowering the standard due to budget constraints.) Bases are funded to the level-of-service provided by MAJCOM standards. Raising the standard will mean adding unit funds, cutting the requirement, or eliminating other services in order to fund the modified standard.
  - 3.5.3. To determine the maximum payment percentage for meeting the acceptable quality levels, you must first make a preliminary determination as to the method of surveillance you will be using. You will make the final determination when you begin drafting your Quality Assurance Surveillance Plan (QASP). For random sampling, divide the estimated cost to perform the required service by the total amount of the task. For example, if the required service to collect and dispose refuse from bulk containers (SubCLIN 0001AA) is \$45,000 and the total amount of all the specific tasks (CLIN 0001) is \$1,000,000, divide \$45,000 (SubCLIN 0001AA) by \$1,000,000 (CLIN 0001) for a maximum payment percentage of 4.5%. (AFCESA recommends the maximum payment percentage block of the

PRS be written as "SubCLIN 0001AA/CLIN 0001.") For one-hundred percent inspection, enter the total amount of the estimated cost to perform the required service(100% of CLIN 0001AA). Include the payment percentage only for those tasks to be inspected by random sampling or 100 percent surveillance.

3.5.4. For more information about writing your PRS, refer to AFMAN 64-108 and work with your Contracting Officer.

#### DELIVERY AND PERFORMANCE SHCEDULE

- **4.1. General.** The time of delivery or performance is an essential contract element and shall be clearly stated. Schedules that are unreasonably tight or difficult to meet can restrict competition and increase contract prices. The establishment of a delivery schedule is a team effort between Civil Engineering (CE) and contracting.
- **4.2. Factors to Consider** when establishing delivery or performance schedules are urgency of need, production time, market conditions, transportation time, industry practices, capabilities of small business concerns, administrative time for obtaining and evaluating offers and for awarding contracts, time for contractors to comply with any conditions precedent to contract performance, and time for the government to perform its obligations under the contract.
- **4.3. Section F of a Service Contract** contains the clauses that identify the required delivery and performance schedule. Contract delivery or performance schedules may be expressed in terms of specific calendar dates, specific periods from the contract award date or contract effective date, specific periods from the contractor receipt of award notice, specific time after contractor receipt of individual order.
- **4.4. Liquidated Damages** clauses should be used only when the time of delivery or performance is such an important factor in the award of the contract that the government may expect to suffer damage if the delivery or performance is delinquent and the extent or amount of such damage would be difficult to ascertain or prove. Service contracts rarely use liquidated damages clauses. However, if used, liquidated damages are based on factual potential damages and cannot be arbitrarily based to serve as a penalty fee.

#### **BID SCHEDULES**

- **5.1. Definition.** The bid schedule is located in Section B of the contract. The bid schedule is the list of task line items identified from the Performance Work Statement (PWS), the quantity required, and the price of each. When the solicitation is issued, the price columns will be blank. Contractors will enter their prices for each task line item when they submit their offer.
- **5.2. CLINs.** Task line items of the bid schedule are called Contract Line Item Numbers, simply referred to as CLINs. CLINs consist of four numeric digits, 0001 through 9999. Each CLIN of the bid schedule should mirror the cost estimate and Purchase Request (AF Form 9). (Also see Chapters 1 and 2.) CLIN numbering is covered by DFARS 204.7103. AFCESA recommends the bid schedule be developed with the PRS because they impact each other. The Contracting Officer has overall responsibility for developing the bid schedule but needs your recommendations.
- **5.3. SubClins.** SubCLINs are contract subline items that provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification. SubCLINs do not need to be separately identified on the AF Form 9 or the cost estimate because the dollar amount of the subCLIN is included in the CLIN amount. However, you can break your cost estimate into subCLIN information if desired. It is very helpful if you identify task line items and subline items at the time you write the PWS. If the task is not identified in the bid schedule, it cannot be increased, decreased, or deleted easily after the contract is awarded. Under each task line item and subline item, reference the PWS paragraph it corresponds to. If there is a Technical Exhibit or a DD Form 1423, Contract Data Requirements List, item required for the service, also identify them under the appropriate task line item.

Figure 5.1. Sample Bid Schedule.

# Section B BID SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QTY	<u>UNIT</u>	<u>UNIT</u> PRICE	AMOUNT
0001	NONPERSONAL SERVICES:				
	Furnish all personnel, equipment (except government furnished containers), tools, materials and supervision to perform scheduled and unscheduled refuse/recyclable materials collection and disposal services in accordance with Section C-5, Performance Work Statement (PWS) for the period 1 Oct through 30 Sep.				
0001AA	Scheduled collection and disposal of refuse from bulk containers (PWS 5.1.1., 5.1.2., 5.1.3., 5.1.4., 5.5.2, TE 1, TE 2, TE 3, and TE 4)	12	MO	\$8,000	\$96,000
0001AB	Collection at curbside and disposal of refuse and recyclable materials from 4,000 units of Military Family Housing Note: Contractor will retain revenues generated from Recyclable Materials. (PWS 5.1.1., 5.1.2., 5.1.3., 5.2., 5.4., 5.5.2., TE 1, TE 2, TE 3, TE 4, and TE 8)	12	MO	\$6,000	\$72,000
0001AC	Furnish all personnel, equipment, tools, materials, and supervision to maintain Bulk Containers IAW with Section C-5, PWS for the period of 1 Oct through 30 Sep. (PWS 5.6.1.)	12	МО	\$2,500	\$30,000
	TOTAL CLIN 0001				\$198,000

## **QUALITY ASSURANCE**

- **6.1. General.** The quality control of a contractor's performance is the responsibility of the contractor; however, government surveillance is required to ensure we receive the contracted services and pay for the actual services received. The Functional Area Chief and Quality Assurance Evaluators establish the procedures for government technical surveillance of contractor performance. (See AFI 63-504 and AFMAN 64-108 for complete surveillance instructions.)
- **6.2. Functional Area Responsibility.** The functional area retains overall responsibility to see that the service is provided to the base if the function is contracted but does not have the authority over actual performance of the function. By law, only a duly appointed contracting officer may enter into contract and provide direction to contractors. The functional area must work through the contracting officer to meet its responsibilities for a contracted function.
- **6.3.** Functional Area Chief (FAC). The FAC is a functional director or commander of any functional area with government program management responsibility for contracted services which provide some or all of the functional mission; e.g., the Civil Engineering Squadron Commander. A FAC is authorized to appoint Quality Assurance Evaluators (QAEs) for contracts administered by personnel under the organizational commander's chain of command. Although the functional director or commander may delegate his or her FAC duties to managers at Flight or Element levels, the functional director or commander is still responsible for all functional contracted services. Check your local Operating Instructions for additional information regarding local FAC procedures.
  - **6.3.1. FAC Roles and Responsibilities.** The FAC must be aware of current mission changes which could affect the contractor's ability to perform as well as perform the following:
    - 6.3.1.1. Prepare or tailor standardized PWSs and Quality Assurance Surveillance Plans (QASPs) according to HQ USAF and MAJCOM direction and obtain contracting officer coordination on the final product.
    - 6.3.1.2. Nominate or appoint qualified individuals as QAEs in accordance with AFI 63-504.
    - 6.3.1.3. Ensure QAEs maintain proficiency in their functional areas by providing functional training.
    - 6.3.1.4. Evaluate QAE job performance not less than annually.
    - 6.3.1.5. Ensure all personnel within the functional area who may have contact with contractor employees do not direct the contractor to perform work which may allow the contractor to make a claim against the government.
    - 6.3.1.6. Complete the mandatory AETC FAC formal training course which may be conducted by mobile AETC instructors or by Quality Assurance Evaluation Program Coordinators (QAEPCs) using the AETC training materials. This training is designed to provide broad knowledge of surveillance procedures and how to manage QAEs. FACs must complete this training in order to more effectively perform their duties.

- **6.4. Quality Assurance Evaluator (QAE).** A primary and an alternate QAE should be appointed as early in the acquisition cycle as possible. Nominations and appointments must be in writing and submitted to the contracting office no later than **90 days** before contract start date.
  - **6.4.1. QAE Roles and Responsibilities.** QAEs conduct contract surveillance and perform quality assurance functions as follows:
    - 6.4.1.1. Maintain technical competency in the functional area of responsibility.
    - 6.4.1.2. Obtain and maintain proficiency in contract surveillance procedures.
    - 6.4.1.3. Understand all contract and surveillance requirements of the specific contracts they survey.
    - 6.4.1.4. Perform surveillance according to the Quality Assurance Surveillance Plan (QASP) and provide documentation of surveillance observations to the contracting officer.
    - 6.4.1.5. Calculate and certify acceptance of services in the manner prescribed by the contracting officer and AFMAN 64-108.
    - 6.4.1.6. Assist in the development of the PWS, surveillance plans, and evaluation criteria and standards.
    - 6.4.1.7. Complete the mandatory AETC QAE formal training course which may be conducted by mobile AETC instructors or by Quality Assurance Evaluation Program Coordinators (QAEPCs) using the AETC training materials.
- **6.5. Quality Assurance Evaluator (QAE) Training.** QAE training is a two-phased program designed to provide in-depth knowledge of surveillance procedures and contact requirements. Phase I training is conducted by mobile AETC instructors or by QAEPCs using AETC training materials. QAEs must complete Phase I training before performing surveillance duties on contracts which AFMAN 64-108 surveillance procedures apply. The Contract Administrator conducts Phase II training for each contract to which a QAE is assigned. QAEs must complete Phase II training before the contract start date for new contracts and before performing surveillance duties on existing contracts.
- **6.6.** Quality Assurance Surveillance Plan (QASP). The QASP provides a systematic method to evaluate the services the contractor is required to furnish, not the details of how the contractor accomplishes the work. It is designed to provide the QAE an effective surveillance method for each listed service on the PRS in the contract.
  - 6.6.1. The contract PRS may identify a combination of the surveillance methods which adequately assures the government of satisfactory contractor performance. However, if the PRS prescribes a deduction provision for a task, the surveillance procedures for that task must specify either random sampling or 100% surveillance of the lot. In selecting the appropriate surveillance method, take into consideration the criticality of the task, the lot size of the task, the surveillance period for the task, the required performance standard, the performance requirement, availability of QAEs to do surveillance, and the value of the surveillance in relationship to the cost or criticality of the task. If it is not a critical task, it may be more appropriate to do periodic surveillance or random sampling rather than 100% inspection.
    - **6.6.1.1. Random Sampling.** This is the most appropriate method for frequently recurring tasks. However, this method of surveillance should not be used for those tasks that are not capable or

practical to re-perform. Random sampling is done to determine whether to accept or reject the contractor's performance of the total lot of a particular task for a given period of time. The QAE evaluates randomly selected samples of the lot to determine the acceptability of the entire lot. Random sampling is statistically based, using indifference quality level to determine the point that divides acceptable from unacceptable performance. For tasks to be surveyed by random sampling procedures, random selection must be generated by either a statistically valid computer program, such as the Air Force Logistic Management Agency's Automated Quality Assurance Evaluator Scheduling Program (QASP version 4.0 or later). EXCEL 5.0 has a random number generator as one of its functions. For more information, access "RAND function" found in EXCEL Help or consult the EXCEL User's Guide.

- 6.6.1.1.1. Contracts monitored by random sampling require the use of sampling guides and checklists for each item. The sampling guides describe the inspection procedures used to record the inspection. Information for the sampling is developed while the sampling information is being compiled for the sampling plan. The guide will contain such data as lot size, sample size, the performance requirement, a description of the sampling procedure which tells how the service will be sampled, and an explanation of the inspection procedure identifying what will be checked during the inspection of the sample.
- 6.6.1.1.2. Checklists (such as the AF Form 798, Quality Assurance Evaluator Decision Table) are used to document surveillance. The Contracting Officer cannot properly administer the contract without documentation of actual surveillance. Documentation of surveillance actions must contain as a minimum the contract number; a short description of the requirement being surveyed; the contract paragraph number referencing the requirement; the method of surveillance and observations, the date, time, and location of surveillance; the results of the surveillance; and the signature and title of the individual doing the surveillance. You may wish to create a decision table for some or all of the performance requirements listed on the PRS to aid the evaluator in finding the source of problems identified as a result of evaluations. The decision table should list the symptoms of the problem and identify the possible sources of the problem. Establish questions for each potential source to determine any contributing factors. Decision tables are helpful to both the QAE and the Contracting Officer in determining what action is appropriate when contract discrepancies are noted. They are especially helpful if the discrepancy could have resulted from government actions and not those of the contractor.
- **6.6.1.2. 100% Inspection.** This surveillance type is preferred for those tasks that occur infrequently. It is also used frequently for those tasks having very stringent performance requirements. 100% inspection should be used for those tasks that are not capable or practical to re-perform. When this type of surveillance is used, the QAE must inspect and evaluate the contractor's performance each time it is performed. The results of the contractor's overall performance is then evaluated to determine acceptability of the lot. The QAE must record the results of the inspection on the QAE log, noting the date and time of inspection. If the inspection indicates defective performance, the QAE must notify the contract manager or NCI of the defect, have the contract manager initial the QAE log, and correct the defect. The QAE will maintain a file of all inspection results.
- **6.6.1.3. Periodic Inspection.** This method of surveillance authorizes re-performance of tasks which are determined to be non-conforming performance. Periodic inspection consists of the evaluation of samples selected on other than a 100 % or statistically random basis. An example of periodic surveillance is weekly inspections when the QAE chooses the location and time in other

than a statistically random manner. This method cannot be used as a basis of deduction from payments because it does not provide a statistical basis for deducting from non-conforming performance. The Contracting Officer may use the results of periodic surveillance inspections as the basis for actions against the contractor. In such cases, the Inspection of Services clause becomes the basis for the Contracting Officer's actions.

- **6.6.1.4.** Customer Complaints. This method of surveillance authorizes re-performance of tasks which are determined to be non-conforming performance. Customer complaints cannot be used as a basis of deduction from payment since it is not a statistically valid method of surveillance. Customer complaints may not always relate to actual requirements of the contract, and verification of customer complaints can be extremely labor intensive. The Contracting Officer may use validated customer complaints as the basis for actions against the contractor. In such cases, the Inspection of Services clause becomes the basis for the Contracting Officer's actions. The QAE must furnish written instructions and customer training to each organization receiving the contractor's service. Instructions and training should cover the format and content of the program and service to be surveilled; the action that may be expected from the QAE contract administrator, and Contracting Officer as a result of the complaints; and the limitations on the customers in dealing with contractor personnel. The QAE is the primary point of contact for and must collect all customer complaints. AF Form 714, Customer Complaint Record, or a locally devised form may be used, but all complaints and any resulting resolution of such complaints must be documented with the information required on the AF Form 714. Customer complaint forms become a permanent part of the OAE surveillance records.
- 6.6.2. The FAC and QAE must determine the performance requirement for inclusion in the PRS. Because contractor performance will not be perfect and unforeseen problems may occur, the PRS allows the contractor to operate within an error rate applied to each specific performance requirement.
- 6.6.3. The performance requirement for tasks to be surveyed by random sampling is the maximum number of defectives allowed in a sample size before the overall lot becomes unacceptable. These maximum numbers are directly related to the maximum error rate located in Technical Exhibit 7, "Performance Requirements Table For Use When Surveillance Is By Random Sampling."
- 6.6.4. The performance requirement for tasks to be surveyed by other than random sampling surveillance methods is the percentage of the total lot or a specific number of tasks, if the lot size is known, that may be defective and still represent acceptable performance for the lot.
- 6.6.5. The QAE will develop a monthly surveillance schedule, AF Form 801, based on the surveillance plan requirements. The monthly schedule will be completed and submitted to the contracting office not later than the seven calendar days before the beginning of the period it covers.
- **6.6.6. QAE Dos and Don'ts.** The following guidance will assist you in carrying out your duties and responsibilities as a QAE:

#### **DOs**

- 1. Represent the Contracting Officer in all technical matters concerning the contract.
- 2. Consult with the Contracting Officer when in doubt about any matter involving a contract or contractor.
- 3. Assist the Contracting Officer to ensure complete and timely performance by the contractor.
- 4. Develop and use the surveillance plan necessary for each contract.
- 5. Keep abreast of the contractor's performance through proper monitoring.
- 6. Work with other functions in handling contractor matters like government-furnished property (Supply) and base passes (Security Police) for contract personnel.
- 7. Give the contractor fair and equal treatment.
- 8. Submit a monthly report verified by the functional area chief (FAC) to the Contracting Officer for review, giving the status of the contractor's performance.
- 9. Accept the services for the government and forward a receiving report/certification of services to the Contracting Officer each month.

#### **DON'Ts**

- 1. Make any agreement with a contractor relating to the commencement of any work or the expenditure of any government funds.
- 2. Encourage a contractor by words, actions, or a failure to act to begin work either on a new proposed effort or on an extension of work beyond the period set forth in an existing contract.
- 3. Act in any way with a contractor or contract employees which may create an impression of favoritism.
- 4. Monitor a contract so closely and rigidly the contractor will lose direction of the work.
- 5. Provide any information relating to any potential contract or contract modification to any contractor or individual unless requested by the Contracting Officer.
- 6. Negotiate or execute a contract, a modification to the contract, or an option to the contract.
- 7. Make final determinations of a contractor's liability for loss, damage, or unreasonable use of government-furnished material (GFM).
- 8. Authorize a contractor to obtain property for use under a contract or to use government-furnished property (GFP) in the contractor's possession obligated to one contractor under a second contract.

#### **AWARD FEE**

- **7.1. Definition.** An award fee is a special provision that provides a pool of dollars associated with performance areas that the contractor may earn (in whole or in part) during the award fee period. The award fee determination is <u>judgmental</u>, made unilaterally by the government, based on its assessment of the contractor's performance in comparison with the evaluation criteria. An award fee may be used in conjunction with any contract type but has most often been associated with cost-plus-award-fee (CPAF) contracts in the past.
- **7.2. Flexibility.** One of the principal advantages of the award fee is its flexibility and adaptability. It can be used at any stage of the requirement. It can be used to evaluate any manufacturing process, technical discipline, or management function within the firm. The fee and the award criteria are determined solely by the government. As the requirements change, or if problems should arise, the government can, after giving the contractor notice, adjust the evaluation criteria or redistribute the fee pool to indicate to the contractor those areas that are most important to the success of the contract. Most importantly, an award fee is a positive motivator. Its focus is on a win-win philosophy.
- **7.3. Award Fee Strategy.** The award fee strategy is captured in the award fee plan. The award fee plan (AFP) is the documented strategy for evaluating a contractor's performance and administratively applying the award fee. It details the evaluation criteria, responsibilities, and procedures for implementing the award fee provision of the contract. The AFP must be tailored to each specific use. This tailoring process is again one of the chief advantages of the award fee because it prevents the administrative burden from becoming disproportionate to the improvement expected in the quality of the contractor's performance and in overall project management. Generally, the AFP includes an introduction, the organizational structure for award fee administration, evaluation requirements, method for determining the award fee, and the method for implementing changes to the plan. Keep the plan simple and current because it must always reflect the objectives of the contract. A copy of the AFP should be included with the draft RFP (as applicable) and the final RFP, and finally, upon contract award provide the contractor the approved plan. The AFP may be used in lieu of a surveillance plan in Manpower Support Contracts.
- **7.4. Evaluation Team.** The organization of the evaluation team is normally no more than three levels: The Fee Determining Official (FDO), the Award Fee Review Board (AFRB), and performance monitors. The structure should be as simple as possible. The simpler the plan, the more effective it is likely to be. At all levels of the award fee team, however, professionalism is absolutely essential. The integrity, knowledge, and behavior of the individuals involved, combined with the equity and thoroughness of the evaluations, are the keys to award fee effectiveness.
  - 7.4.1. The top level in the award fee organization is the FDO. The choice of FDO can influence the level of management that the contractor will assign to the program. If the Government expects high-level contractor management attention, then we must assign an FDO of equivalent stature such as a base or wing commander.
  - 7.4.2. The FDO's primary responsibilities are to approve the award fee plan and any changes to the plan, determine the amount of the award fee earned and payable to the contractor, and appoint the chairperson of the Award Fee Review Board.

- 7.4.3. The AFRB is the second part of the award fee evaluation team and is comprised of experienced acquisition personnel who are generally one management level above the performance monitors. The chairperson's responsibility is to ensure that the award fee program runs smoothly and in a timely manner.
- 7.4.4. The performance monitors are the backbone of the award fee process. The monitors deal with the contractors, or their representatives, on a daily basis and are specialized and intimately familiar with the specific areas of performance to be evaluated. The monitors are provided instructions as to what is required of them. The monitors provide reports which support their recommended grades/scores and may recommend changes to the award fee plan.
- **7.5. Scoring.** Performance areas are those significant functions over which the contractor has considerable control. The number of performance areas or categories chosen should be limited to maintain emphasis on those issues which the Government considers of greatest importance to contractor performance. Since the Government often considers one performance area to be the "most significant," the award fee plan should indicate the relative priorities assigned to the various performance areas. This can be done through narrative phrases such as "more important," "less important" or through percentages. Some important examples of performance areas are technical achievement, technical performance, business management, and cost control.
  - 7.5.1. There are three to five performance grades applied consistently through the AFP for each performance category (the performance categories are determined and defined by the users). The grades are as follows:

Figure 7.1. Sample Performance Grades.

FIVE GRADES	FOUR GRADES	THREE GRADES
Excellent	Excellent	Excellent
Very Good	Very Good	Satisfactory
Good	Satisfactory	Unsatisfactory
Satisfactory	Unsatisfactory	
Unsatisfactory		

- 7.5.2. The award fee plan includes a precise definition of what each grade means in relationship to the performance areas and evaluation criteria. The grades are often associated with specific numerical scores. The purpose of any grading or scoring method is to translate evaluation findings into recommended award fee amounts or ranges. If the score falls under the unsatisfactory area, no award fee will be awarded. While these methods provide a basis for the development of award fee recommendations, they do not substitute for judgment in the award fee determination process--a process that cannot be reduced to any mathematical formula.
- 7.5.3. A grading table is a quantifying device for assigning numerical grades to various levels of performance. It is an evaluation aid to the FDO and can be constructed in any reasonable manner. The total point score need not be 100; however, if 100 is not used, a conversion chart may be needed to convert the performance points to percentage of available award fee. A sample grading table is shown below:

Figure 7.2. Sample Grading Table.

Performance Grade (Score)	Points
Excellent	25
Very Good	20
Good	15
Satisfactory	10
Unsatisfactory	5

- 7.5.4. There is not one government mandated method for determining the appropriate amount of available award fee. Various agencies will employ differing methods; however, the goal is always to effectively motivate a contractor to achieve superior performance. One method your contracting office may use to determine an objective award fee on a fixed price contract is the weighted guidelines method to calculate the profit as if it were a fixed-price incentive contract.
- 7.5.5. Once the total amount of the award fee pool is determined, then that pool is allocated over the evaluation periods. It is preferable to evaluate on the basis of regularly occurring periods and to recognize any significant variations in work intensity or importance when allocating the total award fee potential among these evaluation periods. The award fee approach permits the government to place maximum award fee emphasis on those evaluation periods in which the performance areas of greatest significance will be most susceptible to meaningful evaluation. These periods may or may not correspond to the greatest cost incurrence to the contractor.
- 7.5.6. A very simple example of an award fee calculation, using the grading table cited in paragraph 7.5.3., is shown below:

Figure 7.3. Sample Award Fee Calculation.

AREAS	SCORE	WEIGHTED FACTOR
Quality	18	$(18 \times .32) = 5.76$
Schedule	23	$(23 \times .26) = 5.98$
Business Management	24	$(24 \times .42) = 10.1$
TOTAL		21.8

- 7.5.7. Based on the above calculation, the contractor receives a total score of 21.8 rounded up to 22 (between very good and excellent) which means he receives 88% of his award fee for that period of performance. Also note that the business management performance area is considered more significant based on its weighting factor than the other two areas. These weighted percentages are solely for communicating the Government's relative priorities in terms of the performance areas.
- **7.6. Subjectivity.** The award fee process, by its very nature, is recognized to be subjective, but every effort will be made to assure fairness. Checks and balances have been incorporated into the process to safeguard against arbitrary and unfounded evaluations either for or against the contractor.

#### TECHNICAL EVALUATION FACTORS/STANDARDS

- **8.1. Definition.** In the RFP method of contracting, often referred to as best value contracting, evaluation factors/standards are the tools the technical evaluation team uses to perform evaluations so that each proposal is fairly compared to a uniform baseline. This helps to make sure that each offeror's solution is compared to the same standard to determine its acceptability. While it is human nature for technical team members to compare proposals to each other, this is not allowed. Each offer is compared against the standard, not against the other offers.
- **8.2. Establishing Factors/Standards.** Factors/Standards should be defined and documented prior to the release of the solicitation, must be approved by the contracting office before the evaluation of proposals, and shall not be changed once any offeror's proposal is opened. Evaluation factors/standards shall not be released to any potential offeror nor to anyone who is not directly involved in the evaluation effort.
  - 8.2.1. Evaluation factors/standards are established by the technical team concurrently with the development of the technical evaluation criteria located in Section M of the solicitation. Section M informs the contractor exactly what the government wants to see in an offer. If the criteria is ambiguous or lacking in detail, an offeror may fail to understand the requirement and probably fail to submit a sound offer. If the factors/standards are consistent with the evaluation criteria in Section M, the offeror should be able to perform the work in an acceptable manner, on time, and within cost.
  - 8.2.2. The factors/standards must be consistent with and flow from the evaluation criteria and indicate the MINIMUM acceptable performance. Factors/Standards may be quantitative or qualitative and shall be marked "FOR OFFICIAL USE ONLY." If any requirement is exceeded in the proposal, the evaluation of that proposal must include the reasons for the rating. Likewise, if the proposal does not meet the minimum standards, the evaluation ratings must also be recorded.
  - 8.2.3. The technical team must write a narrative which explains the ratings and recommended awardee (attach all checklists and any other information that helped to determine the ratings). When the contracting officer reviews technical evaluation ratings and narratives, they must correspond exactly with the approved factors/standards. One technique which has been used successfully for technical evaluations is a form of checklist. Each factor/standard is listed on a separate sheet with columns next to it marked "acceptable" and "unacceptable." The evaluator explains the reason for the rating either in an additional column after the "unacceptable" column or under the factor/standard.
  - 8.2.4. The evaluator should assess the possibility of the offeror correcting the problem to allow the proposal to meet the standard. If there are minor irregularities or clerical mistakes or unclear information, a clarification request (CR) is issued to allow the offeror to revise the proposal. If the offeror's response to the clarification does not answer the problem, a deficiency request (DR) must be issued. A deficiency is any part of an offeror's proposal that fails to meet the minimum level of compliance when compared to the factors/standards. If the offeror fails to correct the deficiency, that proposal will be eliminated from the competition. Remember, the offerors must be notified of all deficiencies in their proposals.
  - 8.2.5. Contact your Contracting Office for guidance when drafting evaluation factors/standards.

#### PART 2 -- THE CONTRACTING PROCESS

# Chapter 9

# ACQUISITION PLANS/PROCUREMENT PLANNING

- **9.1.** An Acquisition Strategy Panel (ASP). An ASP is a planning meeting with the CE functional experts, Contracting Office, legal office, security police, manpower office, finance office, and any other organization that you feel can contribute to the planning of the acquisition. Its purpose is to discuss and make decisions about the acquisition strategies and options available. With help from each organization, the Contracting Officer makes the final decision on contract type, set aside, inclusion of award or incentive fees, and method of contracting. Although the Contracting Officer has the ultimate responsibility for the acquisition, inputs from all team members are helpful in planning the acquisition. (Far Part 7)
  - 9.1.1. An ASP is required on high dollar acquisitions, all source selections, OMB A-76 cost studies, and complex acquisitions. Check with your Contracting Office to determine if an ASP is required. If your Contracting Office does not require a formal ASP, request an informal planning meeting to help get the acquisition off to a clean start.
  - 9.1.2. As a rule of thumb, an ASP is convened when the draft PWS is received by the Contracting Office and serves as the starting point for the acquisition milestones.
  - 9.1.3. Never go into an ASP without an idea of what you would like to do. Some decisions are cut and dry, but others are not. If you know an issue will be controversial, be prepared by having the facts and your decisions supported by regulations whenever possible.
  - 9.1.4. Cover each topic as quickly and completely as possible. However, if an issue becomes a problem, it is better to table a discussion or have another meeting to prevent dragging the meeting on or causing irritations. You don't necessarily have to solve all the problems identified in the ASP, but you can plan who will work what problem and when it will be resolved. Make sure everyone understands what they need to do and what suspenses they have. If anyone misses a due date, the contract start date may slip.
  - 9.1.5. Your Contracting Officer will document the meeting and send you a copy. These minutes should not only state what decisions were made, but "how" the decision came about. If asked a question next year as to why the acquisition was developed the way it was, you will have a written document to answer all questions.
- **9.2. Procurement Planning.** The Contracting Officer establishes a milestone plan for each procurement. The plan is a guide and can be altered and documented when delays occur.
  - **9.2.1.** Source Selection Milestones. Figure 9.1. below is an example of a contracting timeline recommended for a formal source selection acquisition and can be modified for a negotiated acquisition by eliminating the source selection requirements.

**Figure 9.1. Source Selection Milestones.** 

1.Draft PWS Package Rec'd	0
2.Acquisition Strategy Panel (ASP) Convened	0
3.Small Business Coordination Compl'd	+4
4.Synopsis Issued	+4
5.Submit SF 98 to DOL	+4
6.Draft Source Selection Plan (SSP) and Eval Standards Rec'd	+30
7.Review of PWS Package Compl'd and Deficiencies Resolved	+60
8.Final PWS Package Rec'd	+120
9.Final ASP Approved	+120
10.Solicitation Prepared	+120
11.Final SSP and Eval Standards Approved	+120
12.Base Contracting Solicitation Review Compl'd	+134
13.JAG Solicitation Review Compl'd	+137
14.MAJCOM Contracting Solicitation Review Compl'd	+151
15. Solicitation Reproduction	+158
16.Solicitation Issued	+159
17.SF 98 Rec'd	+159
18.Preproposal Conference/Site Visit Conducted	+174
19.Proposals Due	+189
20.Initial Tech Evals Started/Price Analysis Req'd	+189
21.Initial Tech Evals Compl'd/Price Analysis Rec'd	+203
22.Equal Employment Opportunity (EEO) Compliance Req'd	+203
23.Clarification/Deficiency Reports Issued	+207
24.Clarification/Deficiency Reports Rec'd	+217
25.Second Tech Evals Started/Price Analysis Req'd	+217
26.Second Tech Evals Compl'd/Price Analysis Rec'd	+231
27.Base Contracting Business Clearance Review Compl'd	+245
28.MAJCOM Business Clearance Review Compl'd	+259
29.Business Clearance Rec'd	+263
30.Best and Final Offers (BAFOs) Req'd	+263
31.BAFOs Rec'd	+273
32.BAFO Tech Evals Started/Final Price Analysis Req'd	+273
33.EEO Compliance Rec'd	+273
34.BAFO Tech Evals Compl'd/Final Price Analysis Rec'd	+287
35. Source Selection Evaluation Team (SSET) Chair Briefed	+288
36.SSET Chair Decision on Recommended Source	+302

[Proposal Analysis Report (PAR)] Compl'd	
37.Contract Prepared	+302
38.Base Contracting Contract/PAR Review Compl'd	+316
39.JAG Contract/PAR Review Compl'd	+319
40.MAJCOM Contract/PAR Review Compl'd	+333
41.Contract Clearance Rec'd (If no competition)	+337
42.SSET Chair Briefing to Source Selection Authority (SSA)	+337
43.SSA Decision Compl'd	+344
44. Notice of Award Issued to Unsuccessful Offerors	+344
45.Contract Awarded	+347
46.Synopsis of Award Issued	+347

**9.2.2. Sealed Bid Milestones.** Figure 9.2. is an example of a contracting timeline recommended for a sealed bid acquisition:

# Figure 9.2. Sealed Bid Milestones.

1.Draft PWS Package Rec d	U
2.Acquisition Strategy Panel (ASP) Convened	0
3.Review of PWS Package Completed and Deficiencies Resolved	0
4.Final PWS Package Rec'd	0
5.ASP Approved	0
6.Small Business Coordination Rec'd	+4
7.Synopsis Issued	+4
8. Solicitation Prepared	+4
9.Base Contracting Solicitation Review Compl'd	+18
10.JAG Solicitation Review Compl'd	+21
11.MAJCOM Contracting Solicitation Review Compl'd	+35
12.Solicitation Reproduction	+42
13.Solicitation Issued	+43
14.Preproposal Conference/Site Visit Conducted	+58
15.Bid Opening Date	+73
16.Equal Opportunity Employment (EEO) Compliance Req'd	+73
17.Determination of Responsibility Compl'd	+87
18.EEO Compliance Rec'd	+87
19.Contract Prepared	+87
20.Base Contracting Contract Review Compl't	+101
21.JAG Contract Review Compl'd	+104
22.MAJCOM Contract Clearance Review Compl'd	+118
23.Contract Clearance Rec'd (If no competition)	+118
24.Notice of Award Issued to Unsuccessful Bidders	+118
25.Contract Awarded	+120
26.Synopsis of Award Issued	+120

#### SMALL BUSINESS SETASIDES

- **10.1. Small Business Program.** The Contracting Officer implements the laws established by Congress to further certain socio-economic programs. One such program is the Small Business Program, authorized by the Small Business Act (15 U.S.C. 631, et seq.) the Armed Services Procurement Act (10 U.S.C. 2302, et seq.), the Federal Property and Administrative Services Act (41 U.S.C. 252), and Executive Order 12138, May 18, 1979. (FAR Part 19)
  - 10.1.1. The Small Business Administration (SBA) was established to implement the Small Business Program. It is the policy of the government to place a fair proportion of its acquisitions with small business concerns. The SBA counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for services is placed with small business concerns.
  - 10.1.2. A small business concern is a business independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified under the criteria and size standards established by the SBA. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business; number of employees; financial resources; competitive status or position; ownership or control of materials, processes, patents, license agreements, facilities, sales territory; and nature of business activity.
  - 10.1.3. Section 8(a) of the Small Business Act [15 U.S.C. 637(a)] established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with the government and subcontract to firms eligible for program participation. The SBA's program is referred to as the 8(a) program and the subcontractors are referred to as 8(a) contractors.
  - 10.1.4. An 8(a) contractor is a small disadvantaged business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and has its management and daily business controlled by one or more such individuals.
- **10.2. Small Business Setasides.** The purpose of small business setasides is to award certain acquisitions exclusively to small business concerns, including 8(a) contractors. A "setaside for small business" is the reserving of an acquisition exclusively for participation by small business concerns. The determination to make a setaside may be unilateral or joint. A unilateral determination is one which is made by the Contracting Officer. A joint determination is one which is recommended by the SBA and concurred by the Contracting Officer.
  - 10.2.1. Each service acquisition with an anticipated dollar value between \$2,500 and \$100,000 is automatically reserved exclusively for small business concerns, unless the Contracting Officer is unable to obtain offers from two or more small business concerns that are competitive in market prices and quality.
  - 10.2.2. The Contracting Officer must also set aside acquisitions over \$100,000 for small business concerns when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns at fair market prices.

10.2.3. The Federal Acquisition Regulation (FAR Part 19.502)) mandates an order of precedence for setting aside an acquisition. The Contracting Officer must consider offering the acquisition to an 8(a) contractor then to a small business. Only after determining there is no capable 8(a) contractor or small business available can the Contracting Officer consider a large business.

## PRE-BID/PRE-PROPOSAL CONFERENCES AND SITE VISITS

- **11.1. Pre-bid/Pre-proposal Conference.** A pre-bid/pre-proposal conference (pre-bid for sealed bid contracts and pre-proposal for negotiated contracts) may be used as a means of briefing prospective offerors and explaining complicated specifications and requirements. A conference is scheduled after the solicitation has been issued and must be held before the date of prospective contractor proposals are due. (FAR Part 14 and 15)
  - 11.1.1. The Contracting Officer is responsible for determining if a pre-proposal conference is required, publishing the time and place of the conference, and arranging for technical and legal representatives to attend. Usually, a pre-proposal conference is accompanied by a site visit.
  - 11.1.2. If time allows, the Contracting Officer may request prospective offerors to submit written questions in advance of the conference. Technical representatives and the Contracting Officer can prepare answers to be delivered during the conference. All questions and answers, those provided in advance and those discussed during the pre-proposal conference/site visit, must be made available to all perspective offerors. The Contracting Officer is responsible for making a complete record of the conference and distributing it to all prospective offerors, whether they attended the conference or not
- **11.2. Site Visit.** A site visit is organized by the Contracting Officer with the cooperation of the technical representatives. The purpose of a site visit is to allow the contractors to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance. All questions pertaining to the site should be held until regrouping for the pre-proposal conference.
  - 11.2.1. The prospective contractors are responsible to ascertain all information possible to clarify the requirement. The Contracting Office must make available as much information as possible for contractors to gain a complete understanding of the requirement. If during the conference the participants identify errors in the solicitation, the conference will not be used as a substitute for amending defects or ambiguities in the solicitation. To change the terms and conditions in a solicitation, the Contracting Officer must accomplish a written amendment.

## METHODS OF PROCUREMENT/TYPES OF CONTRACTS

- **12.1. Methods of Procurement.** Sealed bidding and competitive proposals are both acceptable procedures to use for the acquisition of services. Contracting Officers select the sealed bidding method of procurement when time permits the solicitation, submission, and evaluation of sealed bids; the award will be made on the basis of price and other price-related factors; it is not necessary to conduct discussions with the responding offerors about their bids; and there is a reasonable expectation of receiving more than one sealed bid. If sealed bidding is not appropriate, Contracting Officers may request competitive proposals. (FAR Part 6 and 16)
  - 12.1.1. Invitation For Bids (IFBs) are methods of contracting usually referred to as sealed bids. In an IFB, the contractor is referred to as a bidder and submits a bid. Invitations must describe the requirements of the government clearly, accurately, and completely. Any unnecessarily restrictive requirements that might limit the number of bidders is prohibited.
  - 12.1.2. Request For Proposal (RFPs) are competitive proposals. They are used when the government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals meet the evaluation requirements. In a RFP, the contractor is referred to as an offeror and submits an offer/proposal. Contracting Officers must furnish identical information concerning a proposed acquisition to all prospective offerors.
  - 12.1.3. Both IFBs and RFPs must be publicized. The Commerce Business Daily (CBD) is the public notification media by which the government agencies identify proposed contract actions and contract awards. The notice of contract action is referred to as a synopsis because it briefly outlines the requirement. The Contracting Officer usually discusses the content of the synopsis with the technical representatives for an accurate description of the requirement. A synopsis must be published in the CBD at least 15 days before issuance of the solicitation. Contracting must allow at least a 30-day response time for receipt of bids or proposals from the date the solicitation is issued. Prospective offerors respond to the synopsis notice by submitting an oral or written request for a copy of the solicitation to the Contracting Officer.
  - 12.1.4. In an IFB, bids are evaluated **without discussion**. After the bids are publicly opened and recorded, an award will be made to the responsible bidder whose bid conforms to the solicitation requirements and is most advantageous to the government; i.e., lowest price. Once bids are opened, bidders may not unilaterally withdraw their bids or refuse award of the contract. In the sealed bidding method of acquisition, the Contracting Officer uses only total price and/or price related factors included in the invitation as evaluation criteria to determine contract award.
  - 12.1.5. In an RFP, proposals are evaluated for performance capability as well as price. The factors and subfactors that will be considered in evaluating proposals should be tailored to each acquisition and should include only those factors that will have an impact on the source selection decision. Proposal evaluation is an assessment of both the offeror's proposal and ability to successfully accomplish the prospective contract. CE should evaluate competitive proposals solely on the factors specified in the solicitation, such as past performance and technical requirements. The technical representatives are responsible for the evaluation of the technical requirements and the Contracting Officer is responsible for the price/cost analysis. With the evaluation information developed by the technical representatives, the Contracting Officer will determine the competitive range; i.e., eliminate from the

competition those proposals that no longer have a reasonable chance of being made acceptable and stand a chance of being selected for contract award.

- 12.1.6. Once the lowest priced bidder of an IFB is identified or the successful RFP proposal is determined, the Contracting Officer must make an affirmative determination of the prospective awardee's responsibility. The Contracting Officer may obtain sufficient information by requesting pre-award surveys, researching records and experience data, or requesting the prospective contractor to submit financial and personnel data. The prospective contractor must have adequate financial resources to perform the contract; be able to comply with the required or proposed delivery or performance schedule; have a satisfactory record of integrity and business ethics; have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- **12.2. Types of Contracts.** A wide selection of contract types is available to the government in order to provide needed flexibility in acquiring the services required. The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. Base-level contracts are usually fixed-price contracts and rarely cost-reimbursement. Only firm-fixed-price contracts are used when the method of contracting is sealed bidding. Negotiated contracts may be of any type or combination of types that will promote the government's interest.
  - **12.2.1. Fixed Price Contracts** are the most preferred type of contract for base-level acquisitions because the government assumes less risk and the burden is on the contractor. The contractor agrees to perform the requirement at a firm-fixed price that is not subject to adjustment based on the contractor's cost experience or at an adjustable price based on fluctuations of specific cost elements.
    - 12.2.1.1. A firm-fixed-price contract is a fixed-price contract that places the maximum risk and full responsibility for all costs and resulting profit or loss on the contractor. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden on the Contracting Officer. A firm-fixed-price contract is suitable for acquiring commercial products and services or services on the basis of reasonably definite functional or detailed specifications when the Contracting Officer can establish fair and reasonable prices.
    - 12.2.1.2. A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. This type of contract may be used when: (a) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (b) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. A fixed-price with economic price adjustment should not be used unless the Contracting Officer determines that it is necessary either to protect the contractor and the government against significant fluctuations in costs.
    - 12.2.1.3. A fixed-price contract with an award fee may be used when the government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. Logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

- 12.2.1.4. A fixed-price contract with prospective price redetermination provides for a firm-fixed price for an initial period of contract deliveries or performance and prospective redetermination of price, during the performance period, for subsequent periods of performance. It is used in acquisitions of services for which it is possible to negotiate a fair and reasonable firm-fixed price for an initial period, but not for subsequent periods, of performance.
- 12.2.1.5. A firm-fixed-price, level-of-effort term contract requires the contractor to provide a specified level of effort on work that can be stated only in general terms and requires the government to pay the contractor a fixed dollar amount. This type of contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. Payment is based on the effort expended rather than on the results achieved.
- **12.2.2. Indefinite-Delivery Contracts** may base prices on catalog market prices and may use firm-fixed-price contracts, fixed price with economic price adjustment contracts, or fixed prices with prospective redetermination contracts. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used when the exact times and/or quantities of future deliveries are not known at the time of contract award. All three permit CE stocks to be maintained at minimum levels.
  - 12.2.2.1. Definite-quantity contracts provide for delivery of a definite quantity of specific services for a fixed period, with deliveries to be scheduled at designated locations upon order. This type of contract may be used when it can be determined in advance that a definite quantity of services will be required during the contract period and services are regularly available or will be available after a short lead time.
  - 12.2.2.2. Requirements contracts are used to fill all actual purchase requirements of specific CE services during a specific contract period with deliveries to be scheduled by placing orders with the contractor. A requirements contract may be appropriate for acquiring any service when CE anticipates recurring requirements but cannot predetermine the precise quantities of services needed during a definite period. The Contracting Officer includes in the solicitation and resulting contract a realistic estimated total quantity that may be ordered. This estimate is **not** a representation to an offeror or contractor that the estimated quantity will be definitely required or ordered. Funds are obligated by each delivery order and not by the contract itself.
  - 12.2.2.3. Indefinite-quantity contracts provide for an indefinite quantity, within limits, of specific services to be furnished during a fixed period and deliveries to be scheduled by placing orders with the contractor. The contract requires the stated minimum quantity of the contract be ordered. An indefinite-quantity contract may be used when CE cannot predetermine, above the minimum, the precise quantities of services that will be required during the contract period. Funds for other than the stated minimum quantity are obligated by each delivery order and not by the contract itself.
- **12.2.3. Cost-Reimbursement Types of Contracts** provide for payment of allowable incurred costs as prescribed in the contract. They are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Cost-reimbursement contracts are most often used for **other than base level acquisitions.** FAR Part 16 describes cost reimbursement contracts in detail.

- **12.2.4. Other Types of Contracts.** Time-and-materials contracts, labor-hour contracts, letter contracts, and agreements are types of contracts that do not fall within the description of fixed-price or cost-reimbursement contracts
  - **12.2.4.1. Time-and-Materials Contracts** provide for acquiring services on the basis of materials at costs and direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit. This type of contract is appropriate to use only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. CE surveillance of contractor performance is required to assure that efficient methods and effective cost controls are being used. Time-and-materials contracts may be used only after the Contracting Officer executes a determination and findings that no other contract type is suitable and includes a ceiling price that the contractor exceeds at its own risk.
  - **12.2.4.2. Labor-Hour Contracts** are a variation of the time-and-materials contracts differing only in that the materials are not supplied by the contractor.
  - **12.2.4.3. Letter Contracts** are preliminary contractual documents that authorize the contractor to begin performing services immediately. This type of contract provides a binding contract for the contractor to begin work when negotiating a contract is not possible in sufficient time to meet the requirement. When an award is based on price competition, the Contracting Officer must include an overall price ceiling in the letter contract. A letter contract must include a negotiated definitization schedule. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first.
  - **12.2.4.4. Basic Agreements** are not contracts but written instruments of understanding and are negotiated between an agency or contracting activity and a contractor. A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. It may be used to expedite contracting for uncertain requirements for services when specific items, quantities, and prices are not known at the time the agreement is executed. A basic agreement may be issued to multiple sources for substantially the same items. The government may use these sources interchangeably. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts, but do not cite appropriations or obligate funds. Funds are obligated and services performed when orders are placed under the basic ordering agreement.
- **12.2.5. Incentive Contracts** are appropriate when a firm-fixed-price contract is not appropriate and the required services can be acquired at lower costs with improved delivery or technical performance. Incentive contracts are rarely used for base-level acquisitions. Since it is usually to the government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain.
  - 12.2.5.1. Incentive contracts may contain cost, technical, and delivery incentives. Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract

may provide for other incentives without also providing a cost incentive. Technical performance incentives may be considered in connection with specific product characteristics (e.g., engine thrust or aircraft speed) or other specific elements of the contractor's performance. Technical performance incentives may be particularly appropriate in major systems contracts, both in development and production. Delivery incentives should be considered when improvement from a required delivery schedule is a significant government objective.

- 12.2.5.2. A fixed-price incentive contract is a fixed-price contract that adjusts profit and establishes the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. A fixed-price incentive contract is appropriate when a firm-fixed price contract is not suitable, the contractor's assumption of cost responsibility will provide a positive profit incentive for effective cost control and performance, and the incentives on technical performance have a meaningful impact on the contractor's management of work.
- 12.2.5.3. Fixed-price incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula in which the actual cost that meets the target will result in the target profit or fee, the actual costs that exceed the target will result in a downward adjustment of the target profit or fee, and the actual cost that is below the target will result in an upward adjustment of the target profit or fee.

## THE UNIFORM CONTRACT FORMAT

- **13.1. General.** Contracting Officers prepare IFBs and RFPs using the uniform contract format. The use of the format makes the preparation of the solicitation and contract consistent throughout the government. It is not used for firm-fixed-price or fixed-price with economic adjustment acquisitions that use the simplified contract format. (FAR Part 14 and 15)
- **13.2. Uniform Contract Format.** The uniform contract format consists of the following:
- Part I The Schedule, Sections A H
- Part II Contract Clauses, Section I
- Part III List of Documents, Exhibits, and Other Attachments, Section J
- Part IV Representations and Instructions, Sections K M.

When a contract is awarded, the Contracting Officer will remove Sections K through M from the contract but retain it in the official contract file.

- 13.2.1. Section A is entitled "Solicitation/contract form" and is the cover page of the solicitation and resulting contract. It contains the name, address, and location of the issuing activity; the IFB or RFP number; the date of issuance; the time specified for receipt of bids/offers; the number of pages; the requisition or purchase authority; space for the bidder's/offeror's name and complete address; and a statement that the bidder/offeror should include in the bid/offer the address where payments should be mailed if different. The bidder or offeror signs this page when submitting a bid/offer and the Contracting Officer signs this page when making an award.
- 13.2.2. Section B, "Supplies or services and prices," includes a brief description of the services to be acquired; e.g., the item number, nouns, and quantities. The schedule is the list of task line items identified from the Performance Work Statement (PWS), the quantity required, and the price of each. When the solicitation is issued, the price columns will be blank. Contractors will enter their prices for each task line item when they submit their offer.
- 13.2.3. Section C, "Description/specifications/work statement," identifies the title and date of the PWS and includes any description or specifications needed in addition to Section B.
- 13.2.4. Section D, "Packing and marking," is not often used in service type contracts. However, when used it provides packaging, packing, preservation, and marking requirements.
- 13.2.5. Section E, "Inspection and acceptance," includes inspection, acceptance, quality assurance, and reliability requirements.
- 13.2.6. Section F, "Deliveries or performance," specifies the requirements for time, place, and method of delivery or performance.
- 13.2.7. Section G, "Contract administration data," includes any required accounting and appropriation data and any required contract administration information or instructions other than those on Section A.

- 13.2.8. Section H, "Special contract requirements," includes a clear statement of any special contract requirements that are not included in Section I, "Contract clauses," or other sections of the uniform contract format.
- 13.2.9. Section I, "Contract clauses," includes all clauses, except those required in other sections, that are required by law or the FAR and any additional clauses expected to be included in the resulting contract.
- 13.2.10. Section J, "List of documents, exhibits, and other attachments," lists the title, date, and number of pages for each attached document, exhibit, and other attachment. (When exhibits and other attachments are identified in and made a part of the PWS, generally only the PWS is listed in Section J.)
- 13.2.11. Section K, "Representations, certifications, and other statements of bidders [offerors]," include provisions that require representations, certifications, or submission of other information by the bidders/offerors; e.g., procurement integrity certification or small business representation.
- 13.2.12. Section L, "Instructions, conditions, and notices to bidders [offerors]," provides the bidders/offerors information and instructions not required elsewhere for the preparation of bids/proposals. IFBs include the time and place for bid openings. RFPs may include instructions to submit technical proposals in several parts (a separation of cost or pricing data, past performance data, and technical data) to meet agency requirements.
- 13.2.13. Section M, "Evaluation factors for award," of an IFB identifies the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract. In an RFP, Section M identifies all significant factors and the relative importance of the factors, including cost or price, cost or price-related factors, and non-price-related factors, and any significant subfactor that will be considered in awarding the contract.

## THE NEGOTIATION PROCESS

- **14.1. Definition.** Negotiations mean contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. A negotiation is a procedure that includes the receipt of proposals from offerors, permits oral or written discussions, and usually affords offerors an opportunity to revise their offers before award of a contract. (FAR Part 15)
- **14.2. Responsibilities.** The cognizant technical official is responsible for the technical and past performance requirements related to the source selection process, including developing the evaluation criteria, evaluating the technical proposals, and recommending the source for contract award. The Contracting Officer is responsible for contractual actions related to the source selection process, including issuing the solicitation; conducting and coordinating cost or price analyses; conducting or controlling all negotiations concerning cost or price, technical requirements, past performance, and other terms and conditions; and selecting the source for contract award.
- **14.3. Technical Evaluation.** A technical evaluation is an assessment of the effort a contractor has proposed to accomplish future contract requirements. This is not an evaluation of dollar amounts but rather the information behind the dollar amounts, such as the number and kinds of labor hours, number of computer hours, number of trips, and quantities or kinds of materials proposed. Once technical evaluations are complete, the labor rates, overhead rates and other inputs are applied by contracting personnel to generate the government's objective and negotiation strategies. A contractor's proposal is normally submitted in response to an RFP which states the government's requirement. Once a proposal is received and distributed to various technical team members, the evaluation process begins. The evaluators may request additional information from the contractor to understand the contractor's proposal. The criteria (factors and subfactors) that will be considered in evaluating proposals must be tailored to each acquisition and include only those factors that will have an impact on the source selection decision. The solicitation should be structured for selection of the source whose proposal offers the greatest value to the government in terms of performance, risk management, cost or price, and other factors. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors and the relative importance of each.
  - 14.3.1. The technical evaluation factors for award must be stated in Section M word for word as they appear in the Source Selection Plan if the acquisition is a formal source selection. When accomplishing a Lowest Cost-Technically Acceptable selection, Section M of the solicitation must state that award will be made to the lowest evaluated cost offer that meets all the minimum mandatory criteria in the solicitation. Section M is a critical section of the RFP and must state the relative importance of technical criteria and cost. Evaluation factors are within the broad discretion of CE except that past performance, quality, and cost are mandatory evaluation criteria. Technical criteria may be considered in descending order of importance, of equal importance, or with some equal and others less important. If the acquisition is a formal source selection, the RFP must state whether cost is more important or less important than technical considerations or is of equal importance. Under Lowest Cost-Technically Acceptable selection procedures, award is made to the offeror with the lowest, evaluated cost which meets all the minimum mandatory criteria. A Lowest Cost-Technically Acceptable selection does not permit trade-offs between cost and technical items, factors, or subfactors.

- 14.3.2. It may be appropriate to award to an offeror, based on technical and quality considerations, at **other than low price** when the effort being contracted departs from clearly defined efforts or requires highly skilled personnel. It may be appropriate to award to a technically acceptable offeror with the **lowest price** when the services being acquired are of a routine or simple nature, highly skilled personnel are not required, or the product to be delivered is clearly defined at the outset of the acquisition.
- 14.3.3. Evaluation standards are what the technical evaluation team uses to perform evaluations so that each proposal is fairly compared to a uniform baseline. While it is human nature for technical team members to compare proposals to each other, this is not allowed. Each offer is compared against the standard, not against the other offers. Standards are established by the technical team concurrently with the development of the technical evaluation criteria. Standards must be consistent with and flow from the evaluation criteria and indicate the minimum acceptable performance. The technical evaluation team must establish the evaluation standards prior to beginning evaluations of offers. The standards must be written as an evaluation plan and contain sufficient detail to justify a determination of minimum acceptability for each item, factor, or subfactor. Standards must be prepared all the way down to the subfactor level and approved by the Contracting Officer before proposals are received. Proposals must meet the minimum standards. If this is done, the offeror should be able to perform the work in an acceptable manner, on time, and within cost.

Example of Qualitative Standard:

ITEM: "Organization and Management"

FACTOR: "Work Distribution and Staffing Plan"

Description: Each proposal should contain the offeror's proposed manpower staffing by shift and skill classification for each organizational element for the basic period and all option years. Also, each proposal should contain a functional statement of duties and responsibilities for each organizational element clearly delineating the distribution of work requirements to cover all aspects of the PWS. If cross-utilization of personnel is proposed, details must be provided regarding skill involved, number of employees and a plan for cross-training.

<u>Standard</u>: The standard is met when the proposal:

- a. Provides a comprehensive, accurate and workable staffing plan for all functional areas by skill classification to include number of personnel, hours of work, skills required for each functional area, and position responsibilities.
- b. Provides a cross-training plan which identifies the skills and job areas for which cross-training is planned. Normally, the technical team goes through the following steps when writing the technical evaluations: Read the RFP, PWS, evaluation standards, and the Source Selection Plan if a formal source selection; Read a section of the first offeror's proposal; Begin the evaluation with the evaluation standards on the desk in view of the evaluator. Continue through all items, factors, and subfactors; Start evaluating the next offeror's proposal. Continue until each offer has been evaluated.
  - 14.3.4. The technical evaluation official is responsible for documenting the technical evaluation to include the basis for evaluation, an analysis of the technically acceptable and unacceptable proposals, a summary matrix or quantitative ranking of each technical proposal in relation to the best rating pos-

sible, and a summary of findings. The Contracting Officer is responsible for cost or price analysis and the evaluation of the cost estimate or price to determine if the offer is reasonable, the offeror understands the work, and the offeror has the ability to perform the contract.

- **14.4.** Competitive Range. When the technical and contract teams are both finished evaluating all the proposals and all clarifications or deficiencies have been resolved, the Contracting Officer will make a competitive range decision. The Contracting Officer relies on the recommendation of the technical team to make the determination. The determination is based on the technical evaluations of the factors that were stated in the solicitation as well as price/cost evaluations. The competitive range must include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, a rule of thumb is "the proposal should be included."
  - 14.4.1. If the Contracting Officer determines a proposal no longer has a reasonable chance of being selected for contract award, the Contracting Officer notifies the unsuccessful offerors in writing at the earliest practicable time that their proposals are no longer eligible for award.
  - 14.4.2. The Contracting Officer must write a Competitive Range Determination to justify why offerors were excluded from the competitive range and to determine which offerors will be allowed to participate in discussions/negotiations. The Determination must justify how the technical and price/cost aspects impact the decision to exclude an offeror. The more thoroughly the technical evaluations are documented, the easier it will be to justify the exclusions.
- **14.5. Discussions.** Unless the solicitation states that the government intends to evaluate the proposals and make an award without discussions, the Contracting Officer must conduct written or oral discussions with **all offerors** within the competitive range. Discussions are usually conducted in writing and begin with a letter to each offeror from the Contracting Officer, requesting answers to the CRs and DRs. It is possible that the requests for CRs and DRs will be the only discussions required.
  - 14.5.1. If discussions are held, the Contracting Officer must request Best and Final Offers (BAFOs). More than one call for BAFOs is discouraged.
  - 14.5.2. The Contracting Officer must control all discussions, advise the offerors of deficiencies in their proposals, resolve any uncertainties concerning the technical proposals and other terms and conditions of the proposals, resolve any suspected mistakes without disclosing the evaluation process, provide the offerors a reasonable opportunity to submit any price/cost, technical, or other revisions to their proposals that may result from the discussions, and provide the offeror an opportunity to discuss additional past performance information obtained from references the offeror provided.
  - **14.5.3. All** deficiencies must be identified. Each offeror must be notified of his/her deficiencies and given an opportunity to respond before discussions are concluded and BAFOs requested.
  - 14.5.4. As a result of discussions, it is possible that the competitive range may change. If so, the Contracting Officer with the help of the technical team must make another competitive range decision.
- **14.6. Debriefings.** When a contract is awarded on the basis of competitive proposals, an offeror may submit a written request for a debriefing. To be considered timely, the offeror's written request must be submitted within three days after the date on which the offeror received notice of contract award. Usually, only unsuccessful offerors request debriefings; however, don't be surprised if the successful offeror

wants a debriefing, too. The purpose of a debriefing is to give offerors an opportunity to improve future proposals.

- 14.6.1. Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the Contracting Officer and offeror.
- 14.6.2. The Contracting Officer should chair any debriefing session held and CE should provide support. CE usually briefs the technical aspects to the offerors and may wish to share the debriefing duties among several of the technical team members. The debriefer may use a narrative or script to debrief from but only after submitting it to the Contracting Officer for review before the debriefing.
- 14.6.3. Contracting Officers may permit offerors to submit questions in writing before the debriefing to give the government time to research specific evaluation points. Submission of questions is highly recommended because it gives CE and the Contracting Officer time to formulate complete answers. However, just because an offeror asks a question does not mean that an answer is automatically given. The information must be releasable.
- 14.6.4. At a minimum, the debriefing information shall include: (a) The government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable; (b) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror; (c) The overall ranking of all offerors when any ranking was developed by the Contracting Officer during the source selection; (d) A summary of the rationale for award; (e) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- 14.6.5. The debriefing will never include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Debriefings should not reveal any information **exempt** from release under the Freedom of Information Act, including trade secrets, privileged or confidential manufacturing processes and techniques, commercial and financial information that is privileged or confidential (cost breakdowns, profit, indirect cost rates, etc.), and the names of individuals providing reference information about an offeror's past performance.

## THE AIR FORCE CLEARANCE PROCESS

- **15.1. General.** The objectives of the Air Force clearance process are to ensure that solicitations effectively implement approved acquisition strategies; negotiation objectives represent fair and reasonable business arrangements and are consistent with law and regulations; negotiated contract prices, terms, and conditions conform to approved business clearance parameters; contracts clearly reflect the complete agreement of the parties and are consistent with laws, regulations and policies; and Air Force management is provided feedback on the operation of its contracting system, implementation of contracting policies, and the quality of contract actions, allowing management to foster continuous process improvement. (AFFARS Part 5301.90)
  - 15.1.1. The service contract actions that require business clearance and, if noncompetitive, contract clearance are negotiated contract or modification actions, definitizations of undefinitized contractual actions, undefinitized change orders, undefinitized long-lead contracts, not-to-exceed options, priced orders under Basic Ordering Agreements, modifications implementing a unilateral price determination, and actions specified by the Assistant Secretary of the Air Force (Acquisition), (ASAF(A)).
- **15.2. Approval Authority.** Business and contract clearance approval authority is delegated through the Deputy Assistant Secretary (Contracting), (SAF/AQC). Approval authority may be at the SAF/AQC, MAJCOM level, or Contracting Officer level depending on the dollar value of the action.
- **15.3. Solicitation Review.** The clearance process begins with review of the solicitation. All solicitations must be reviewed if the resulting contract action is expected to require business clearance. Once the reviewing authority completes the review, the Contracting Officer must implement the recommendations, provide additional data, and resolve matters.
- **15.4. Business Clearance.** The purpose of the business clearance is to request award without discussions, request Best and Final Offers (BAFOs), or begin negotiations. The approving authority determines whether to approve the RBC, approve it with conditions, or disapprove it.
- **15.5.** Contract Clearance. The purpose of the contract clearance is to request approval to award the contract. Contract clearance is not required for sealed bid unless requested by the Contracting Officer or directed by the business clearance reviewing authority. The Contracting Officer cannot sign the contract until contract clearance is received. If the contract clearance document states any conditions, the Contracting Officer cannot award the contract until all the conditions are met.

#### **USE OF OPTIONS**

- **16.1.** When and How To Use Options. Usually, contracts are written to provide services for a basic year and four one-year options to preserve the continuity of operations and avoid the potential cost of disrupted support. Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods cannot exceed five years. An option means a unilateral right in a contract by which the government may elect to purchase additional, in-scope services or elect to extend the term of the contract. The Contracting Officer may include options in contracts for both sealed bidding and negotiated when it is in the government's interest. (FAR Part 17)
  - 16.1.1. Options should **not** be used when the delivery requirements are far enough into the future to permit competitive acquisition, production, and delivery or when an indefinite quantity or requirements contract would be more appropriate than a contract with options.
  - 16.1.2. An option should **not** be exercised (used/included) if the contractor will incur undue risks, market prices for services are likely to change substantially, or the option represents known firm requirements for which funds are available unless the basic quantity is a learning or testing quantity and competition for the option is impracticable once the initial contract is awarded.
  - 16.1.3. If options are included in the solicitation, the Contracting Officer must evaluate all the offeror's option costs in the price/cost analysis before making award.
- **16.2. Exercising an Option.** Before an option can be exercised, the Contracting Officer must provide a written notice to the contractor within the time period specified in the contract. Options are usually exercised after contract award and shortly before contract expiration. However, sometimes the basic period of an awarded contract may be too short to allow sufficient time to notify the contractor of the government's intent to exercise the first option. When this occurs, the contract is awarded and the first option year is exercised simultaneously. When exercising an option, the Contracting Officer must make a written determination for the contract file.
  - 16.2.1. The Contracting Officer must determine that funds are or will be available; the contractor's performance is satisfactory; the requirement covered by the option fulfills an existing government need; the exercise of the option is the most advantageous method of fulfilling the government's need, price and other factors considered; and the option was synopsized or exempt from synopsis.

# OTHER THAN FULL AND OPEN COMPETITION/JUSTIFICAITON AND APPROVALS

- 17.1. Other Than Full and Open Competition. Contracting Officers are required by law to promote full and open competition in soliciting offers and awarding government contracts. Contracting without full and open competition is a violation of statute unless permitted by one of the following exceptions as allowed in FAR 6.3: (a) only one responsible source and no other services will satisfy CE requirements; (b) unusual and compelling urgency; (c) industrial mobilization; engineering, developmental, or research capability; or expert services; (d) international agreement; (e) authorized or required by statute; (6) national security; or (f) public interest. (FAR Part 6)
  - 17.1.1. When services required by CE are available from only one responsible source or a limited number of responsible sources, and no other services will satisfy the CE requirements, other than full and open competition is authorized under statute 10 U.S.C. 2304(c)(1). An example of only one source may be a requirement from the original source in a follow-on contract for the continued provision of highly specialized services. When it is likely that award to any other source would result in substantial duplication of cost to the government that could not be recovered through competition or when there would be unacceptable delays in fulfilling the requirement, the highly specialized source may be the only source capable to satisfy the requirement.
    - 17.1.1.1. Using only one source as the authority not to compete may be appropriate when there is a reasonable basis to conclude that CE's minimum needs can only be satisfied by the unique services available from only one source or the unique services available from only one or a limited number of sources with unique capabilities. Other situations, such as the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or the acquiring of utility services, may also dictate that only one supplier can furnish the services.
    - 17.1.1.2. Contracts awarded using this authority must be supported by a written justification and approval (J&A) and published in the Commerce Business Daily. Any bid or proposal submitted as a result of the publication of the requirement must be considered.
  - 17.1.2. When the services needed are of such an unusual and compelling urgency that the government would be seriously injured unless CE is permitted to limit the number of sources from which it solicits bids or proposals, the authority to use other than full and open competition is statute 10 U.S.C. 2304(c)(2). Under this authority, the Contracting Officer is still required to request offers from as many potential sources as practicable under the circumstances.
    - 17.1.2.1. Contracts awarded using this authority must be supported by a written J&A; however, the J&A may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.
  - 17.1.3. Authority 10 U.S.C. 2304(c)(3) is used for other than full and open competition: (a) when it is necessary to award the contract to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing services in case of a national emergency or to achieve industrial mobilization; (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or (c) to acquire the services of an expert for any current or anticipated litigation or dispute.

- 17.1.3.1. Use of this authority for a national emergency or industrial mobilization in service acquisitions may be appropriate when it is necessary: (a) to keep vital facilities or suppliers in business in the event of a national emergency; (b) to train a selected supplier in the furnishing of critical services, prevent the loss of supplier's ability and employees' skills, or maintain active engineering, research, or development work; (c) to maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization; (d) to limit competition for current acquisition of selected services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements; (e) to create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or Canada; (f) to continue in the production of manufactured critical items when there would otherwise be a break in production; (g) to divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or (h) to acquire jewel bearing and related items.
- 17.1.3.2. Use of this authority for engineering, research, or development capability may be appropriate when it is necessary: (a) to establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology; (b) to establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or (c) to contract for supplies or services as are necessary to support items (a) and (b) above.
- 17.1.3.3. Use of this authority for expert services may be appropriate when it is necessary to acquire the services of an expert to use in any litigation or dispute involving the government or a neutral person, such as a mediator or arbitrator, to facilitate the resolution of issues in an alternative dispute resolution process.
- 17.1.3.4. Contracts awarded using this authority must be supported by a written J&A.
- 17.1.4. Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government of international organization or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government. The authority to use the international agreement exception is statute 10 U.S.C. 2304(c)(4).
  - 17.1.4.1. This authority may be used when a contemplated acquisition is to be reimbursed by a foreign country that requires the product be obtained from a particular firm as specified in official written direction or when a contemplated acquisition is for services to be performed in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.
  - 17.1.4.2. DoD contracts awarded using this authority are **exempt** from writing a J&A.
- 17.1.5. The authority to contract without providing full and open competition for service acquisitions authorized or required by statute is 10 U.S.C. 2304(c)(5). Full and open competition need not be provided for when a statute expressly authorizes or requires the acquisition be made through another agency or other specified source.
  - 17.1.5.1. This authority may be used when an acquisition is made through the Federal Prison Industries (UNICOR), statute 18 U.S.C. 4124; Qualified Nonprofit Agencies for the Blind and

- Severely Handicapped, statue 41 U.S.C. 46-48c; Government Printing and Binding, statute 44 U.S.C. 501-504, 1121; or sole source awards under the 8(a) program, statute 15 U.S.C. 637.
- 17.1.5.2. Contracts awarded using this authority must be supported by a written J&A except for those awarded under 41 U.S.C. 46-48, 15 U.S.C. 637, or when the statute expressly **requires**, not simply authorizes, the procurement be made from a specified source.
- 17.1.6. When disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, the agency is permitted to contract without providing for full and open competition. The authority to use other than full and open competition is statute 10 U.S.C. 2304(c)(6).
  - 17.1.6.1. This authority may be used for any acquisition when disclosure of these needs would compromise the national security. This authority should not be used merely because the acquisition is classified, or merely because access to classified information will be necessary to submit a proposal or to perform the contract.
  - 17.1.6.2. Contracts awarded using this authority must be supported by a written J&A.
  - 17.1.6.3. This statutory authority requires agencies to request offers from as many potential sources as is practicable under the circumstances.
- 17.1.7. Full and open competition need not be accomplished when the agency head determines it is not in the public interest in the particular acquisition concerned. The authority to use this exemption is statute 10 U.S.C. 2304(c)(7) and may be used when none of the other authorities apply.
  - 17.1.7.1. A written determination to use this authority must be made by the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, the Administrator of the National Aeronautics and Space Administration, or the head of any other executive agency.
  - 17.1.7.2. The Congress must be notified in writing of such determination not less than 30 days before award of the contract.
  - 17.1.7.3. If required by the head of the agency, the Contracting Officer must prepare a justification to support the written determination.
- 17.1.8. To fulfill the statutory requirements relating to small business concerns, Contracting Officers may set aside solicitations to allow only small businesses to compete. No separate justification or determination is required to set aside a contract action for small business concerns. However, if the acquisition source is a small business and falls under the statutory authority to permit contracting without providing for full and open competition, the policies and procedures under the statutory authority apply.
- 17.1.9. To fulfill statutory requirements relating to section 8(a) of the Small Business Act, Contracting Officers may limit competition to eligible 8(a) contractors. No separate justification or determination is required to limit competition to eligible 8(a) contractors. If the acquisition source is an 8(a) contractor and falls under the statutory authority to permit contracting without providing for full and open competition, the policies and procedures under the statutory authority apply.
- 17.2. Justification and Approvals (J&As). A Contracting Officer cannot negotiate a sole source contract or any other contract without providing for full and open competition unless, when required, a justi-

fication is written and approved. The level of approval can range from the Contracting Officer to the Assistant Secretary of the Air Force (Acquisitions), depending on the dollar threshold of the acquisition. Air Force FAR supplement (AFFARs), SubPart 5306, Table 5306-1 is a table of J&A approval requirements.

- 17.2.1. Each justification must contain sufficient facts and rationale to justify the use of the specific authority cited. Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplemental documentation. Justifications citing statute 10 U.S.C. 2304(c)(1) must be made available for public inspection. Contracting Officers must carefully screen all justifications for contractor proprietary data and remove all such data before making the justification available for public inspection.
- 17.2.2. Before writing the J&A, contact your Contracting Officer for the required format. As a minimum, each justification must include the following information per FAR Part 6 (Also see AFFARs SubPart 5306.303):
  - 17.2.2.1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."
  - 17.2.2.2. Nature and/or description of the action being approved.
  - 17.2.2.3. A description of the services required to meet the agency's needs, including the estimated value.
  - 17.2.2.4. An identification of the statutory authority permitting other than full and open competition.
  - 17.2.2.5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
  - 17.2.2.6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized.
  - 17.2.2.7. A determination by the Contracting Officer that the anticipated cost to the government will be fair and reasonable.
  - 17.2.2.8. A description of the market research conducted and the results or a statement of the reason market research was not conducted.
  - 17.2.2.9. Any other facts supporting the use of other than full and open competition, such as an explanation of why technical data packages, specification, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available; an estimate of the cost to the government that would be duplicated and how the estimate was derived; or data, estimated cost, or other rationale as to the extent and nature of the harm to the government.
  - 17.2.2.10. A listing of the sources that expressed written interest in the acquisition.
  - 17.2.2.11. A statement of the actions the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the services required.
  - 17.2.2.12. Contracting Officer certification that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.

- 17.2.3. Each justification must include evidence that any supporting data that is the responsibility of technical or requirements personnel and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel. Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the Contracting Officer.
- 17.2.4. If time permits, submit a **draft** J&A to the Contracting Officer for review before obtaining the appropriate signatures of approval to provide a smoother J&A process.

# CONTRACTS WITH NATIONAL INDUSTRIES OF THE BLIND (NIB) AND NATIONAL INDUSTRIES OF THE SEVERELY HANDICAPPED (NISH)

- **18.1.** The Committee. Contracts with National Industries of the Blind (NIB) and National Industries of the Severally Handicapped (NISH). The Javits-Wagner-O'Day Act (JWOD Act), 41 U.S.C. 46-48c, and rules of the Committee for Purchase from People Who Are Blind or Severely Disabled, 41 CFR Chapter 51, establish the policies and procedures for acquisitions from nonprofit agencies employing people who are blind or severely disabled. (FAR Part 8)
  - 18.1.1. The Committee is an independent government activity with members appointed by the President of the United States. It is responsible for determining those services to be purchased by all entities of the government from JWOD participating nonprofit agencies, establishing prices for the services, and establishing rules and regulations to implement the JWOD Act.
  - 18.1.2. The Committee maintains a Procurement List of all services required to be purchased from JWOD participating nonprofit agencies. Services listed on the Procurement List are identified with a black square and the words "NIB/NISH Mandatory Source." If the services are identified on the Procurement List, the Contracting Officer must obtain those services from NIB or NISH.
- **18.2.** Requirement to Purchase Services. Contracting Officers are required to purchase services listed on the Procurement List. Contracting Officers must request allocations in sufficient time for a reply and for nonprofit agencies to produce the services within the required performance schedule.
  - 18.2.1. Contracting Officers may acquire services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency (NIB/NISH). Purchase exceptions are granted when the individual nonprofit agency cannot provide the services within the time required or when the individual nonprofit agency cannot provide the quantity economically. The Committee may also grant a purchase exception under any circumstances it considers appropriate.
- **18.3.** When the quality of services received is unsatisfactory, CE must address the complaints to the Contracting Officer who will submit them to the individual nonprofit agency involved with a copy to NIS/NISH.
- **18.4.** In accordance with statue 10 U.S.C. 2304(c)(5), a contracting action with NIB/NISH does not require compliance with full and open competition or synopsis in the CBD.

# **PART 3 -- AFTER CONTRACT AWARD**

# Chapter 19

#### CONTRACT ADMINISTRATION

- **19.1. Postaward Conference.** (FAR Part 42) After a contract is awarded, a contractor may request the Contracting Officer to arrange for a postaward conference; however, the Contracting Officer will decide whether one is or is not necessary. The Contracting Officer should consult the functional representative before determining if a postaward conference is required. When deciding, the Contracting Officer considers, as a minimum, the following:
  - nature and extent of the preaward survey and any prior discussions with the contractor;
  - type, value, and complexity of the contract;
  - complexity and acquisition history of the service;
  - requirements for spare parts and related equipment;
  - urgency of the delivery schedule and relationship of the product or service to critical programs;
  - extent of subcontracting;
  - contractor's performance history and experience with the product or service;
  - contractor's status, if any, as a small business, small disadvantaged, or women-owned small business concern;
  - contractor's performance history with small, small disadvantaged and women-owned small business subcontracting programs;
  - safety precautions required for hazardous materials or operations; and
  - complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.
  - 19.1.1. A postaward conference aids both the government and the contractor personnel to achieve a clear and mutual understanding of all contract requirements, and identify and resolve potential problems. However, it is not a substitute for the contractor's fully understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.
  - 19.1.2. A postaward conference is encouraged to assist small business, small disadvantaged, and women-owned small business concerns.
  - 19.1.3. If the Contracting Officer determines a postaward conference is necessary, the Contracting Officer is responsible for establishing the time and place of the conference; preparing the agenda, when necessary; notifying appropriate government representatives, designating or acting as the chairperson; conducting a preliminary meeting of government personnel (usually a contract specialist), and preparing a summary report of the conference. If a postaward conference is scheduled, it is important that those invited attend the meeting.
  - 19.1.4. The Contracting Officer or the designated chairperson must emphasize that it is not the purpose of the meeting to change the contract. Changes can be made to the contract as a result of questions that affect the contract. During the conference, the Contracting Officer may make commitments

- or give directions within the scope of the Contracting Officer's authority; however, any change to the contract that results from the postaward conference must be made by a written contract modification.
- 19.1.5. The Contracting Officer or chairperson prepares and signs a report of the postaward conference which includes all items discussed, names of the participants assigned responsibility for further action, and the due dates for the actions. The FAC should receive a copy of the report.
- **19.2. Contract Changes.** (FAR Part 43) When the terms of a contract need to be changed, Contracting Officers, acting within the scope of their authority, are empowered to execute contract modifications on behalf of the government. Other government personnel do not have the authority to execute modifications, act in such a manner as to cause the contractor to believe that they have authority to bind the government, or direct or encourage the contractor to perform work that should be the subject of a contract modification.
  - **19.2.1. Process.** The process for initiating a change to your contract may vary with each command; however, when a change is needed, the FAC usually submits a written request and a detailed government estimate with an AF Form 9 for additional funding when applicable, to the Contracting Officer. The written request must provide sufficient details that communicate to the Contracting Officer exactly how and why you want your contract changed. Depending on the change required, the Contracting Officer will choose the appropriate type of modification and begin the process.
  - **19.2.2. Contract Scope.** No change to an existing contract can be made if the change is considered "out-of-scope." The general scope of a contract is work which would be regarded as fair and reasonable within the contemplation of the parties when the contract was awarded. A modification falls within the scope of the contract if it is of a nature which potential bidders/offerors would have reasonably anticipated under the Changes clause.
    - 19.2.2.1. The contracting parties may not change the terms of a contract if it interferes with the competitive process. For example, after contract award, the Contracting Officer cannot relax the specifications of the contract because the other bidders/offerors submitted their proposals based on the specification in the original contract. Had the other bidders/offerors submitted their proposals based on the relaxed specification, the contract may have been awarded to a different contractor.
    - 19.2.2.2. A modification is outside the scope of the contract if it involves a cardinal change. Cardinal changes are modifications beyond the scope of work contemplated by the parties, and work that the contractor could legally decline to perform.
    - 19.2.2.3. Modifications which significantly change the magnitude or quality of the contract may be out-of-scope. Factors to be considered include significant changes in contract prices, time requirements, and additional work requirements relative to the requirements specified in the original contract. Needed services that were overlooked and discovered after contract award are considered to be out-of-scope and, therefore, cannot be added through contract modification.
    - 19.2.2.4. Changes or additions to an existing contract are considered within the scope of the contract when the added work is essentially the same work being done, the quantity of added work is not a significant increase, the agency had the contractual right to add the work, and the solicitation resulting in the awarded contract adequately warned bidders/offerors that this type of modification could occur.
    - 19.2.2.5. When contemplating a change to the existing contract, answer the following questions:

- Is the work specified in the modification also specified in the contract?
- Are the changes permitted by the Changes clause?
- Is the modification based on the work the parties originally agreed to?
- Is the modification an integral part of completion of the contract?
- Is the modification necessary to provide a complete and serviceable unit?
- **19.2.3. Changes Clause.** The Changes clause states the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of the contract in any one or more of the following:
  - Description of services to be performed,
  - Time of performance (i.e., hours of the day, days of the week, etc.),
  - Place of performance of the services,
  - Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the government, in accordance with the drawings, designs, or specifications,
  - Method of shipment or packing of supplies, and/or
  - Place of delivery.
- **19.2.4. Contract Modifications.** Contract modifications are written changes in the terms of a contract and can be either bilateral or unilateral.
  - 19.2.4.1. A bilateral modification is also called a supplemental agreement because it is signed by the contractor and the Contracting Officer. Bilateral modifications are used to make negotiated equitable adjustments resulting from the issuance of a change order, definitized letter contracts, and reflect other agreements of the parties modifying the terms of contracts.
  - 19.2.4.2. A unilateral modification is signed only by a Contracting Officer. Unilateral modifications are used to make administrative changes, issue change orders, make changes authorized by clauses other than a Changes clause (e.g., Property clause, Option clause, Suspension of Work clause), and issue termination notices. At base level, a unilateral modification is used most often to exercise an option or to make administrative changes (written unilateral contract changes that do not affect the substantive rights of the parties; e.g., correction of typographical mistakes, changes in paying office, or changes in accounting and appropriation data).
- **19.2.5. Change Orders.** Change orders are written orders, signed by the Contracting Officer, directing the contractor to make changes that the Changes clause authorizes the Contracting Officer to order without the contractor's consent. Change orders are issued by the Contracting Officer unless the authority is delegated to an Administrative Contracting Officer (ACO). Generally, government contracts contain a Changes clause that permits the Contracting Officer to make unilateral changes, in designated areas, within the general scope of the contract. The contractor must continue performance of the contract as changed; however, in cost-reimbursement or incrementally funded contracts, the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause. The following information outline the procedures and processes the Contracting Office must follow when issuing a change order.
  - 19.2.5.1. The Contracting Officer may issue a change order by telegraphic message under unusual or urgent circumstances provided that copies of the message are furnished promptly to the same addresses that received the basic contract, immediate action is taken to confirm the change

by issuance of a written change order, the message contains substantially the information required by the written change order, and the Contracting Officer's signature on the copy of the message.

- 19.2.5.2. Contractor's accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit offers, the Contracting Officer must advise contractors of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the Change Order Accounting clause at FAR Part 52.243-6.
- 19.2.5.3. The categories of direct costs normally segregable and accountable under the terms of the change order Accounting clause are nonrecurring costs (e.g., costs of obsolete or re-performed work), costs of added distinct work caused by the change order (e.g., new subcontract work), and costs of recurring work (e.g., labor and material costs).
- 19.2.5.4. Change order documentation may consist of a change order followed by a supplemental agreement, a supplemental agreement alone, or a unilateral modification alone. When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued. However, administrative changes and changes issued pursuant to a clause giving the government a unilateral right to make a change (e.g., an option clause) initially require only one document.
- 19.2.5.5. Contracting Officers must definitize (negotiate equitable adjustments resulting from change orders) change orders in the shortest practicable time. In the process of definitization, Contracting Officers must establish suspense systems to ensure accurate identification and prompt definitization of unpriced change orders, make a cost analysis and consider the contractor's segregable costs, and request field pricing support when required.
- 19.2.5.6. To avoid subsequent controversies from a supplemental agreement containing an equitable adjustment as the result of a change order, the Contracting Officer should ensure all elements of the equitable adjustment are presented and resolved and include a release statement from the contractor that releases the government from any and all liability under the contract for further equitable adjustments.
- 19.2.5.7. When a modification or a change order requires the submittal of cost or pricing data, the contractor's pricing proposal must be segregated by contract line item with sufficient detail to permit the Contracting Officer to make a cost analysis. Information can be submitted in the contractor's own format unless the Contracting Officer determines that the use of a specific format is essential. Breakdowns must include basic cost elements, such as material costs, established catalog or market prices, direct labor costs, indirect labor costs, and other direct costs. The contractor must also submit line-item summaries that include the following information: (a) a list of the cost elements, (b) current estimates of what the cost would have been to complete the deleted work not yet performed and the cost of deleted work already performed, (c) the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's accounting records, (d) the net cost to be deleted which is the estimated cost of all deleted work less the cost of deleted work already performed, (e) the offeror's estimate for cost of work added by the change, (f) the net cost of change which is the cost of work added, less the net cost to be deleted,

- and (g) a reference, an attachment in which the information supporting the specific cost element may be found.
- **19.3. Delays.** (FAR Part 42) Situations may occur during contract performance that cause the government to order a work stoppage. Clauses are included in the contract to settle contractor claims for delays that are not otherwise covered in the contract.
  - **19.3.1. Stop-work Orders.** A stop-work order may be used in any negotiated fixed-price or cost-reimbursement service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs. Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order is approved at a level higher than the Contracting Officer. Stop-work orders should not be used in place of a termination notice after a decision to terminate has been made.
    - 19.3.1.1. CE responsibility is to submit in writing to the Contracting Officer the necessary information to begin the stop-work order. Stop-work orders should include a description of the work to be suspended, instructions concerning the contractor's issuance of further orders for materials or services, guidance to the contractor on action to be taken on any subcontracts, and other suggestions to the contractor for minimizing costs.
    - 19.3.1.2. Promptly after issuing the stop-work order, the Contracting Officer should discuss the stop-work order with the contractor and modify the order if necessary.
    - 19.3.1.3. As soon as feasible after a stop-work order is issued, but before its expiration, the Contracting Officer must take appropriate action to terminate the contract, cancel the stop-work order, or extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of a stop-work order must be by a supplemental agreement).
    - 19.3.1.4. The stop-work order clause included in a contract authorized the Contracting Officer to stop all, or any part, of the work in the contract for a period of 90 days after the order is delivered to the contractor and for any further period to which the parties may agree. Upon receipt of the stop-work order, the contractor must immediately comply with terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. The clause also authorizes the Contracting Officer to make an equitable adjustment in the delivery schedule or contract price, or both.
  - **19.3.2. Government Delay of Work.** The Government Delay of Work clause is an optional clause that can be used in solicitations and contracts when a fixed-price contract is contemplated for services. The clause provides for the administrative settlement of contractor claims that arise from delays and interruptions in the contract work caused by the acts or failures to act of the Contracting Officer. The clause does **not** authorize the Contracting Officer to order a suspension, delay, or interruption of the contract work. If performance of all or any part of contract work is delayed or interrupted by an act of the Contracting Officer in the administration of the contract that is not authorized by the contract or by a failure of the Contracting Officer to act within the time specified in the contract, the contractor can request in writing a claim for any increase in the cost of performance of the contract caused by the delay or interruption. No adjustment is allowable under this clause if the delay or interruption was the result of any other cause, including the contractor's negligence or fault.

- **19.4.** Payments. (FAR Part 32) All solicitations and contracts must specify payment procedures, payment due dates, and interest penalties for late invoice payment. Invoice payments and contract financing payments will be made by the government as close as possible to, but not later than, the due dates specified in the contract. Payments will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance. Checks will be mailed and electronic funds transferred will be transmitted on or about the same day the payment action is dated. The due date for making an invoice payment or contract financing payments by the designated payment office is the 30th day after the designated payment of th nated billing office has received a proper invoice or proper request from the contractor or the 30th day after government acceptance of delivery of services performed by the contractor. Contract financing can be a useful working tool in government acquisition by expediting the performance of essential contracts. Government financing shall be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. The Contracting Officer must consider an order of preference when a contractor requests contract financing: private financing without government guarantee, customary contract financing, loan guarantees, unusual contract financing, and advance payments. The basic authority to contract financing for any purchase other than commercial item purchases is section 305 of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App 2091), as amended. Contract financing methods include advance payments, progress payments based on costs, loan guarantees, and performance-based payments.
  - 19.4.1. Advance payments are advances of money by the government to a prime contractor before complete performance under one or more contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors. Your contracting office may authorize advance payments in negotiated and sealed bid contracts. Advance payments may be provided on any type of contract; however, contracting offices authorize advance payments sparingly. Advance payments is the least preferred method of contract financing. Advance payments may be considered appropriate for contracts solely for the management and operation of government-owned plants, contracts entered into with financially weak contractors whose technical ability is considered essential for the acquisition, contracts with small business concerns, or contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the government and the contractor.
  - 19.4.2. Progress payments based on costs may be customary or unusual. Customary progress payments use the customary progress payment rate for Department of Defense contracts of 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses, applicable to the total costs of performing the contract. Any higher rate is considered an unusual progress payment. Unusual progress payments are used only if the contract necessitates predelivery expenditures that are large in relation to contract price and in relationship to the contractor's working capital and credit, the contractor fully documents an actual need to supplement any private financing available, and the contractor's request is approved by the head of the contracting activity. Unusual progress payment arrangements require advance approval of the Under Secretary of Defense (Acquisition) Defense Procurement [USD(A)DP].
  - 19.4.3. Congress has authorized the Federal Reserve Banks to act on behalf of guaranteeing agencies as fiscal agents of the United States in making loan guarantees. Guaranteed loans are essentially the same as conventional loans made by private financial institutions, except the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the

amount of the guaranteed percentage. The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The Department of Defense has not requested such authority in recent years, and none is now available.

- 19.4.4. Performance-based payments are contract financing payments that are not payment for accepted items. Performance-based payments may be made on performance measured by objective or quantifiable methods, accomplishment of defined events, or other quantifiable measures of results. Performance-based payments must be used only if the Contracting Officer and offeror are able to agree on the performance-based payment terms, the contract is a definitized fixed-price type contract, and the contract does not provide for other methods of contract financing, except advance payments or guaranteed loans.
- **19.5.** Close-out. (FAR Part 4) Files for contracts using simplified acquisition procedures should be considered closed when the Contracting Officer receives evidence of receipt of property and final payment. Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within six months after the date on which the Contracting Officer receives evidence of physical completion. Files for contracts requiring settlement of indirect cost rates (cost reimbursement contracts) should be closed within 36 months of the month in which the Contracting Officer receives evidence of physical completion. Files for all other contracts should be closed within 20 months of the month in which the Contracting Officer receives evidence of physical completion. A contract file should not be closed if the contract is in litigation or under appeal or if the contract is a termination and all the termination actions have not been completed.
  - 19.5.1. The contracting office files for simplified acquisition contracts should be closed when the Contracting Officer receives evidence of receipt of property and final payment. Contracting office files for all other contracts should be closed as soon as practicable after the Contracting Officer receives a contract completion statement from the contract administration office. The Contracting Officer must prepare a statement for the contract file that all contractual actions required have been completed. The paying office must close the contract file after issuing the final payment voucher.
  - 19.5.2. A contract is considered to be physically completed when the contractor has completed the required deliveries and the government has inspected and accepted the services, all options have expired, or the government has given the contractor a notice of complete contract termination. Facilities contracts and rental, use, and storage agreements are considered to be physically completed when the government has given the contractor a notice of complete contract termination or the contract period has expired.
  - 19.5.3. The office administering the contract is responsible for initiating administrative close-out of the contract after receiving evidence of its physical completion. An initial contract funds status review must be accomplished within 30 days of contract completion, and the contract file must be annotated to reflect the dates of the review, funds status, and resulting actions taken by the administrative contracting officer. After the contract funds status review, the administering office must identify any excess funds to the contracting office.
    - 19.5.3.1. The administrative close-out procedures must ensure that disposition of classified material is completed, the final patent report is cleared, the final royalty report is cleared, there is no outstanding value engineering change proposal, the plant clearance report is received, property clearance is received, all interim or disallowed costs are settled, price revision is completed, subcontracts are settled by the prime contractor, prior year indirect cost rates are settled, the termina-

tion docket is completed, the contract audit is completed, contractor's closing statement is completed, the contractor's final invoice has been submitted, and the contract funds review is completed, and deobligation of any excess funds is recommended.

19.5.3.2. When the above has been verified, the Contracting Officer administering the contract must ensure that a contract completion statement is prepared containing the contracting office name and address or the contract administration office name and address (if different from the contracting office), the contract number, the last modification number, the last call or order number, the contractor name and address, the dollar amount of excess funds (if any), the voucher number and date (if final payment has been made), the invoice number and date (if final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown), a statement that all required contract administration actions have been fully and satisfactorily accomplished, the name and signature of the Contracting Officer, and the date.

19.5.3.3. The contracting office responsible for maintaining the contract files must hold all completed contract files for a period of 12 months after completion. After the initial 12-month period, the contracting office must send the records to the local records holding or staging area until they are eligible for destruction. Contract files must be stored, handled, and disposed of in accordance with the table below:

**Table 19.1. Disposition of Contract Files.** 

Document	Retention Period
(1) Records pertaining to exceptions or protests, claims for or against the United States, investigations, cases pending or in litigations, or similar matters.	Until final clearance or settlement, or until the retention period otherwise specified for the document in paragraphs (2) through (13) is completed, whichever is later.
(2) Signed originals of contracts over \$25,000.	6 years and 3 months after final payment.
(3) Signed originals of justifications and approvals and determination and findings required by FAR Part 6, and copies of supporting documentation and data.	6 years and 3 months after final payment.
(4) Signed originals of contracts of \$25,000 or less.	3 years after final payment.
(5) Unsuccessful offers or quotations that pertain to contracts using simplified acquisition procedures.	Retain 1 year after date of award or until final payment, whichever is later; but if the Contracting Officer determines that the files have future value to the government, retain as long as advisable.
(6) Contract status (progressing), expediting, and production surveillance records.	6 months after final payment.
(7) Rejected engineering change proposals.	6 months after final payment.
(8) Labor compliance records, including equal employment opportunity records.	3 years after final payment.
(9) Contractors general file.	Until superseded or obsolete.
(10) Records or documents other than those in paragraphs (1) through (9) pertaining to contracts using simplified acquisition procedures.	1 year and 3 months after final payment.
(11) Records or documents other than those in paragraphs (1) through (10) pertaining to contracts not using simplified acquisition procedures.	6 years and 3 months after final payment.
(12) Files for canceled solicitations.	5 years after cancellation.
(13) Solicited and unsolicited unsuccessful offers and quotations above the simplified acquisition threshold in FAR Part 13.	Until contract completion date.

#### REMEDIES

- **20.1. Protests.** (FAR Part 33) A protest is a written objection by an interested party to a solicitation or other request by an agency for offers for a contract, the cancellation of the solicitation or other request, an award or proposed award of the contract, or a termination or cancellation of an award of the contract based on improprieties concerning the award of the contract. An interested party for the purpose of filing a protest means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Protest requirements are found in the Federal Acquisition Regulation Part 33 and its Subparts.
  - 20.1.1. If a protest is filed, the Contracting Officer must seek to resolve the protest regardless of the level at which the protest was initially filed; however, the decision to deny a protest can only be made at the level in which the protest was filed. When notified of a protest, the Contracting Officer must immediately contact the protester to make sure the basis of the protest is fully understood, thoroughly consider its merits, and take appropriate action. The Contracting Officer will also notify CE of the protest and may request assistance from CE to answer the protester's concerns.
  - 20.1.2. Contracting Officers are required to consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO).
  - 20.1.3. When a protest is filed directly with the agency, an award cannot be made until a decision on the protest is issued unless the Contracting Officer determines in writing that the services to be contracted for are urgently required, delivery or performance will be unduly delayed by failure to make award promptly, or prompt award will otherwise be advantageous to the government. The Contracting Officer need not suspend contract performance or terminate the awarded contract when protests received after award are filed only with the agency unless it appears that an award may be invalidated and a delay in receiving services is not prejudicial to the government's interest.
    - 20.1.3.1. When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award should be informed of the protest.
    - 20.1.3.2. Agency protests may be submitted by interested parties to the individual and location designated in the provision at 52.233-2, Service of Protest. The designated person is normally the Contracting Officer.
    - 20.1.3.3. Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening of sealed bids or the closing date of receipt for proposals must be filed prior to the bid opening or the closing date. In all cases, protests must be filed (submitted to the agency by the close of business) no later than 14 calendar days after the basis of the protest is known or should have been known. However, the agency can consider the merits of any protest which is not timely filed if the protest raises significant issues.
    - 20.1.3.4. A protest must include the protester's name, address, and telephone number; the solicitation or contract number; a detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; a request for a ruling by the agency; and a statement as to the form of relief requested.

- 20.1.3.5. Protests will be dismissed if they are not submitted by an interested party, in a timely manner, or with the required information.
- 20.1.4. When a protest is filed with the GAO, a protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or to the Contracting Officer no later than one calendar day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest to the Contracting Officer within one calendar day.
  - 20.1.4.1. Immediately after receipt of the GAO's written notice that a protest has been filed, the agency (usually the Contracting Officer) must notify the contractor if award has been made. If no award has been made, the agency must notify all parties who appear to have a reasonable prospect of receiving the award if the protest is denied.
  - 20.1.4.2. The Contracting Officer must compile all necessary information for an agency report which will be submitted to the GAO by the agency. The agency report must include a protest file, a Contracting Officer's signed statement of relevant facts, a memorandum of law, a list of the documents withheld from the protester and the reasons for withholding, and a list of parties being provided the documents. The protest file must consist of the protest, the offer submitted by the protester, the offer being considered for award or being protested, all relevant evaluation documents, the solicitation, the abstract of offers or relevant portions, and any other document the agency determines are relevant to the protest.
  - 20.1.4.3. At the same time the agency submits the report to the GAO, the agency must furnish copies of the report to the protester and any interested party. The interested parties will receive all relevant documents except those the agency decides to withhold for any reason. The agency must notify the GAO of any documents withheld from the protester or any interested party and state the reasons for withholding them. The protester or any interested party are required to furnish a copy of any comments on the agency report directly to the GAO within 14 days and submit copies to the Contracting Officer.
  - 20.1.4.4. When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized by the head of the contracting activity upon written finding that urgent and compelling circumstances which significantly affect the interest of the United States will not permit waiting the decision of the GAO or that award is likely to occur within 30 days of the written finding. When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester, the Contracting Officer must immediately suspend performance or terminate the awarded contract unless the head of the contracting activity determines in writing that the contract performance will be in the best interest of the United States or urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.
  - 20.1.4.5. The GAO will issue its recommendation on a protest within 125 days from the date of filing of the protest with the GAO. If an amended protest is filed which adds a new ground of protest, the GAO will attempt to issue its recommendation within the time limit of the initial protest.
  - 20.1.4.6. If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend the agency

- pay the protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney fees, consultant fees, expert witness fees, and bid or proposal preparation costs.
- **20.2.** Claims. (FAR Part 33) A claim means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.
  - 20.2.1. The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. The Act provides for the payment of interest on contractor claims, certification of contractor claims, and a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.
  - 20.2.2. The government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the Contracting Officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable. ADR means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration.
  - 20.2.3. Contractors must submit their claim in writing to the Contracting Officer for a decision within six years after accrual of a claim, unless the contracting parties agreed to a shorter time period. The six-year time period does not apply to contracts awarded prior to 1 Oct 95 or to a government claim based on a contractor claim involving fraud.
  - 20.2.4. Contracting Officers will make a written determination on a contractor's claim. Contracting Officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. After the Contracting Officer makes a final decision, the contractor may appeal to the Agency Board of Contract Appeals (BCA) or to the United States Court of Federal Claims. If the contractor appeals to the BCA, the Contracting Officer must provide data, documentation, information, and support to the BCA. Pending final decision on a claim, the Contracting Officer is authorized to require the contractor to continue contract performance.
  - 20.2.5. In accordance with FAR, Part 33.207, contractors must provide a certification when submitting a claim exceeding \$100,000 or when using arbitration pursuant to 5 U.S.C. 575-580 or procedures pursuant to the Administrative Dispute Resolution Act (ADRA), regardless of the amount claimed. In accordance with Air Force FAR Supplement, Part 5333.207, contractors must provide certification for claims exceeding \$50,000. Therefore for Air Force acquisitions, certification of claims must be at the \$50,000 threshold. The certification must state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable; and that I am duly authorized to certify the claim on behalf of the contractor." If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the Contracting Officer must refer the matter to the agency official responsible for investigating fraud.
- **20.3.** Warranties. (FAR Part 46) A warranty is a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the supplies or performance of services fur-

nished under the contract. The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the Contracting Officer must consider the nature and use of the services, the government's ability to enforce the warranty, if an item is customarily warranted and the cost includes the warrant, or if the cost of a warrant adequately offsets the assurance of a satisfactory product.

- 20.3.1. Normally, a warranty provides that the government may obtain an equitable adjustment of the contract or direct the contractor to repair or replace the defective items at the contractor's expense.
- 20.3.2. If it is not practical to direct the contractor to make the repair or replacement or the repair or replacement does not afford an appropriate remedy to the government, the warranty should provide alternative remedies, such as, authorizing the government to retain the defective item and reduce the contract price or arrange for the repair or replacement of the defective item at the contractor's expense.
- 20.3.3. If it is not practical to return an item to the contractor for repair, to remove it to an alternate source for repair, or to replace the defective item, the warranty should provide that the government may repair, or require the contractor to repair, the item in place at the contractor's expense.
- 20.3.4. The contractor's obligation to repair or replace the defective item or to agree to an equitable adjustment of the contract must include responsibility for the costs of furnishing all labor and materials to re-inspect the items, to accomplish required repair or replacement of defective items, and to test, inspect, package, pack, and mark repaired or replaced items.
- 20.3.5. If repair or replacement of defective items is required, the contractor must be required by the warranty to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, the contractor's liability for transportation charges incurred must not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant and subsequent return.
- **20.4. Inspection of Services Fixed Price.** (FAR Part 46) The government has the right to inspect all services of a contract at all times and places during the contract. If the government performs inspections on the premises of the contractor or a subcontractor, the contractor or subcontractor must furnish assistance.
  - 20.4.1. If any of the services do not conform with contract requirements, the government may require the contractor to re-perform the services in conformity with the contract requirements at no increase to the cost of the contract.
  - 20.4.2. When the defects in services cannot be corrected by re-performance, the government may require the contractor to take necessary action to ensure that future performance conforms to the contract requirements and reduce the contract price to reflect the reduced value of the services performed.
  - 20.4.3. If the contractor fails to promptly re-perform the services or to take the necessary action to ensure future performance will be in conformity with the contract requirements, the government may perform the services, either through another contract or in-house, and charge the contractor any cost incurred by the government that is directly related to the performance of such services. However, the government has the right to terminate the contract for default if performing the contract through another contract or in-house is not feasible.

- **20.5. Termination for Default.** (FAR Part 49) Termination for default is generally the exercise of the government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. Under contracts containing the Default clause at 52.249-8, the government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to delivery the supplies or perform the services within the time specified in the contract, fails to perform any other provision of the contract, or fails to make progress and that failure endangers performance of the contract.
  - 20.5.1. When a contractor has defaulted by failure to make delivery of the supplies or perform the services within the specified time, no notice of failure or notice of the possibility of termination for default is required to be sent to the contractor before the actual notice of termination. However, if the government has taken any action that might be construed as a waiver of the contract delivery or performance date, the Contracting Officer must send a notice to the contractor, setting a new date for the contractor to make delivery or complete performance. The notice will reserve the government's rights under the Default clause.
  - 20.5.2. When the contractor fails to perform some of the other provisions of the contract or fails to make progress as to endanger performance of the contract, the Contracting Officer must give the contractor written notice specifying the failure and providing a period of at least ten (10) days in which to cure the failure. Upon expiration of the notice period, the Contracting Officer may issue a notice of termination for default unless it has been determined that the failure to perform has been cured.
  - 20.5.3. A written notice of termination for default must call the contractor's attention to the contractual liabilities and request the contractor to show cause why the contract should not be terminated for default. If the Contracting Officer determines appropriate, the show cause notice may invite the contractor to discuss the matter at a conference.
  - 20.5.4. The Contracting Officer must terminate contracts for default only by a written notice to the contractor. The notice must state that the contract is being terminated for the default under the contract clause authorizing the termination, the effective date of the termination, the extent of the termination, any special instructions, and the steps the contractor should take to minimize the impact on personnel if the termination will result in a significant reduction in the contractor's work force.
  - 20.5.5. Under a termination for default, the government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The government may elect, under the Default clause, to require the contractor to transfer title and deliver to the government completed supplies and manufacturing materials, as directed by the Contracting Officer.
  - 20.5.6. The Contracting Officer can use the Default clause as authority to acquire any completed supplies or manufacturing materials unless it has been ascertained that the government does not already have title under some other provision of the contract. The Contracting Officer has the authority to acquire manufacturing materials under the Default clause for the purpose of providing those materials to another contractor.
  - 20.5.7. The government must pay the contractor the contract price for any completed supplies, and the amount agreed upon by the Contracting Officer for any manufacturing materials, acquired by the government under the Default clause.

- 20.5.8. The contractor is liable to the government for any excess costs incurred in acquiring supplies and services similar to those terminated for default and any other damages, whether or not repurchased.
- 20.5.9. When the supplies or services are still required after termination, the Contracting Officer must repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The Contracting Officer must repurchase at a reasonable price, considering the quality and delivery requirements. The Contracting Officer may repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost may not be charged against the defaulting contractor for more than the undelivered quantity terminated for default. Generally, the Contracting Officer will make a decision whether or not to repurchase before issuing the termination notice.
  - 20.5.9.1. If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the Contracting Officer to use any terms and acquisition method deemed appropriate for the repurchase. However, competition is required to the maximum extent practicable for the repurchase.
  - 20.5.9.2. If the repurchase is for a quantity over the undelivered quantity terminated for default, the Contracting Officer **must** treat the entire quantity as a new acquisition.
  - 20.5.9.3. If the repurchase is made over the price of the supplies or services terminated, the Contracting Officer, after completion and final payment of the repurchase contract, must make a written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs.
- **20.6. Termination for Convenience.** (FAR Part 49) The Contracting Officer should only terminate contracts for convenience when it is in the Government's interest. The Contracting Officer must effect a no-cost settlement instead of issuing a termination notice when the contractor will accept one, no government property was furnished, and no outstanding payments are due the contractor (or debts due the government).
  - 20.6.1. When the price of the undelivered balance of the contract is less than \$5,000, the contract should not be terminated for convenience but should be permitted to run to completion.
  - 20.6.2. After the Contracting Officer issues a notice of termination, the Termination Contracting Officer (TCO) is responsible for negotiating any settlement with contractor, including a no-cost settlement if appropriate.
  - 20.6.3. The Contracting Officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.
  - 20.6.4. The Contracting Officer must terminate contracts for convenience only by a written notice to the contractor. The notice must state that the contract is being terminated for the convenience of the government under the contract clause authorizing the termination, the effective date of the termination, the extent of the termination, any special instructions, and the steps the contractor should take to minimize the impact on personnel if the termination will result in a significant reduction in the contractor's work force.
  - 20.6.5. Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by a negotiated agreement, determination by the TCO, costing-out

under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, or a combination of these methods. The TCO must settle a settlement proposal by determination only when it cannot be settled by agreement.

- 20.6.6. After receipt of the notice of termination, the contractor must comply with the notice and the termination clause of the contract, except otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require the contractor:
  - 20.6.6.1. stop work immediately on the terminated portion of the contract and stop placing sub-contracts thereunder;
  - 20.6.6.2. terminate all subcontracts related to the terminated portion of the prime contract;
  - 20.6.6.3. immediately advise the TCO of any special circumstances precluding the stoppage of work;
  - 20.6.6.4. perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;
  - 20.6.6.5. take necessary or directed action to protect and preserve property in the contractor's possession in which the government has or may acquire an interest, and deliver the property to the government;
  - 20.6.6.6. promptly notify the TCO in writing of any legal proceedings growing out of any sub-contract or other commitment related to the termination portion of the contract;
  - 20.6.6.7. settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
  - 20.6.6.8. promptly submit the contractor's own settlement proposal, supported by appropriate schedules;
  - 20.6.6.9. and dispose of termination inventory, as directed or authorized by the TCO.
- 20.6.7. A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit.
- 20.6.8. The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.
- 20.6.9. The TCO must allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profits and consequential damages are not allowed.
- 20.6.10. Promptly after the effective date of termination, the TCO must have all undelivered completed-items inspected and accepted if they comply with the contract requirements and determine which accepted items are to be delivered under the contract. The contractor is not authorized to include the cost of these items in the settlement proposal but must submit the invoice in the usual manner as required under the contract.
- 20.6.11. Subject to the provisions of the termination clause, the contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination. The final settle-

ment proposal must be submitted within one year from the effective date of the termination, unless the period is extended by the TCO.

WILLIAM HALLIN, Lt General, USAF DCS/Installations and Logistics

## **Attachment 1**

# GLOSSARY OF ABBREVIATIONS, ACRONYMS, AND TERMS

# Abbreviations and Acronyms

**ACO**—Administrative Contracting Officer

**ADRA**—Administrative Dispute Resolution Act

AFP—Award Fee Plan

**AFRB**—Award Fee Review Board

**AFMAN**—Air Force Manual

**ASP**—Acquisition Strategy Panel

**BAFO**—Best and Final Offeror

**BCE**—Base Civil Engineer

**CBD**—Commerce Business Daily

**CDRL**—Contract Data Requirements List

**CE**—Civil Engineering

**CLIN**—Contract Line Item Number

**CO**—Contracting Officer

**CR**—Clarification Request

**DR**—Deficiency Request

**FAC**—Functional Area Chief

**FAR**—Federal Acquisition Regulation

**FDO**—Fee Determining Official

**FICA**—Federal Insurance Contributions Act

**FUI**—Federal Unemployment Insurance

**G&A**—General and Administrative

**GAO**—General Accounting Office

**GSBCA**—General Services Board of Contract Appeals

**H&W**—Health and Welfare

**HCA**—Head of the Contracting Agency

**IFB**—Invitation For Bid

**J&A**—Justification and Approval

JWOD Act—Javits-Wagner O'Day Act

NIB—National Industries for the Blind

**NISH**—National Industries for the Severely Handicapped

**ODC**—Other Direct Costs

**O&M**—Operation and Maintenance

**PRS**—Performance Requirement Summary

**PWS**—Performance Work Statement

**QAE**—Quality Assurance Evaluator

**QASP**—Quality Assurance Surveillance Plan

**RBC**—Request for Business Clearance

**RCC**—Request for Contract Clearance

**RFP**—Request For Proposal

**SBA**—Small Business Administration

**SOW**—Statement of Work

**SUI**—State Unemployment Insurance

**TCO**—Termination Contracting Officer

#### **Terms**

**ACQUISITION**—The acquiring by contract with appropriated funds of goods or services by and for the use of the federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**ANALYST**—A person charged with the analysis of a function for the purpose of developing contract requirement and administration documents.

**CONTRACTING OFFICER'S APPOINTMENT**—(Also known as a warrant) the written appointment of a contracting officer which states any limitation on the scope of authority to be exercised, other than limitations contained in applicable laws or regulations.

**COMMANDER**—The officer responsible for the installation or activity having service functions contracted. Generally a commander is the organizational commander of the functional area chief and often is the commander of both the functional area chief (FAC) and the chief of the contracting office; i.e., wing commander, support group commander, logistics group commander, tenant unit commander, or commanders of subordinate commands. The exact title or position varies depending on the organizational structure and the particular service in question.

**CONCERN**—Any business entity organized for profit with a place of business located in the United States and which makes a significant contribution to the United States economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making

affiliation findings, any business entity whether organized for profit or not and any foreign business entity (i.e., any entity located outside the United States) shall be included.

**CONTRACT**—A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.

**COMPETITIVE RANGE**—Evaluated proposals remaining in competition that may participate in written or oral discussions and that have a reasonable chance of being selected for award.

**CONTRACTING**—Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency that it is in the government's interest to do so. Contracting includes description of supplies and services required, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

**CONTRACTING OFFICE (OR SQUADRON)**—The Air Force contracting squadron or office responsible for award or administration of service contracts.

**CONTRACTING OFFICER**—The duly appointed government agent authorized to award or administer contracts. The only person with the authority to enter into, administer, or terminate contracts and make determinations and finding. Contracting officers may bind the Government only to the extent of the authority delegated to them.

**DISCUSSION**—Any oral or written communication between the government and an offeror, other than communications conducted for the purpose of minor clarification, whether or not initiated by the government, that involves information essential for determining the acceptability of a proposal or provides the offeror an opportunity to revise or modify its proposal.

**FAIR MARKET PRICE**—A price based on fair and reasonable costs under normal competitive conditions and not on lowest possible cost.

**FEE DETERMINING OFFICIAL (FDO)**—A fee determining official is the top level in the award fee organization. The choice of FDO can influence the level of management that the contractor will assign to the program. Primarily, the FDO is responsible for approving the award fee plan, and determining the amount of award fee earned and payable to the contractor.

**FUNCTIONAL AREA**—The organization having responsibility for the actual performance of a given service whether it is performed in-house or by contract; i.e., the transportation organization has responsibility for packing and crating; the civil engineering organization has responsibility for custodial services and family housing maintenance.

**FUNCTIONAL AREA CHIEF (FAC)**—A functional director or commander of any functional area with government program management responsibility for contracted services which provide some or all of the functional mission. For example, for Civil Engineering, the Squadron Commander is the functional area chief. The functional director or commander may delegate his or her FAC duties to managers at Flight or Element levels (see AFI 63-504).

**HEAD OF THE AGENCY**—(for Department of Defense)--The Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition), and the Director of Defense

Procurement, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense.

**HEAD OF THE CONTRACTING ACTIVITY**—The official who has overall responsibility for managing the contracting activity.

**NEGOTIATION**—Contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract.

**OFFER**—A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids are offers called "bids," and responses to requests for proposals are offers called "proposals." Responses to requests for quotations are **not** offers but "quotes" and, therefore, not binding.

**PERFORMANCE REQUIREMENTS SUMMARY**—A listing of the service outputs under the contract that are to be evaluated by the QAE on a regular basis, the surveillance methods to be used for these outputs, and the performance requirements of the listed outputs.

**QUALITY ASSURANCE EVALUATOR (QAE)**—A qualified individual selected by the FAC to monitor, evaluate, and accept contract services. QAEs are also referred to as Quality Assurance Representatives (QARs), Contracting Officer's Representatives (CORs), Contracting Officer's Technical Representatives (COTRs), etc.

**QUALITY ASSURANCE EVALUATOR PROGRAM COORDINATOR (QAEPC)**—Is an individual, normally from the contracting activity, selected to coordinate the Quality assurance Evaluator Program. The QAEPC is a coordinator, as well as a trainer, for the FACs and QAEs.

**QUALITY CONTROL**—A management function whereby control of quality of raw or produced material is exercised for the purpose of preventing production of defective material. For purposes of this manual, quality control is those actions taken by a contractor to control the production of outputs to ensure that they conform to the contract requirements.

**RATIFICATION**—The act of approving an unauthorized commitment by an official who has the authority to do so. The term "ratification" is often used interchangeably with the term "unauthorized commitment," an agreement that is not binding solely because the government representative who made it lacked the authority to enter into that agreement on behalf of the government.

**RECURRING SERVICES**—Services that are required regularly and/or repeatedly.

**SOLICITATION**—Invitation for bids (IFBs), requests for proposals (RFPs), and requests for quotations (RFQs) to solicit offers or quotations from prospective contractors. Solicitations shall contain the information necessary to enable prospective contractors to prepare offers or quotations properly.

**STANDARDIZED PERFORMANCE WORK STATEMENT**—A performance work statement for a specific service that is prepared by a major command or higher level functional area and required for use by subordinate organizations when such services are contracted.